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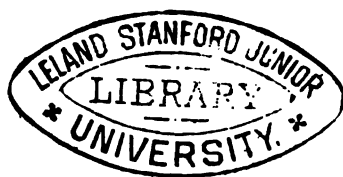
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PREFACE

TO THE SECOND EDITION.



THIS Volume will be found to contain the Statutes relating to Railways, with notes of the decided cases down to November, 1887. Our object has been to make the book complete, by treating of all the questions likely to arise with reference to Railways, and at the same time to state the law as concisely as possible. In addition to the law of compensation, considerable space has been devoted to the Duties and Liabilities of Carriers, the Law of Negligence, and of Master and Servant, the Rating of Railways, and the decisions of the Railway Commissioners. The practice upon Petitions under the Lands Clauses Acts has also been treated at some length.

It has been thought, on the whole, best to arrange the Statutes in a strictly chronological order, though there is much to be said in favour of grouping them together according to their subject-matter. To some extent the disadvantage of a chronological arrangement has been corrected by cross references in the margin. Full marginal notes have been added throughout.

In this edition the Statutes relating to Railways in Ireland have been added.

A list of the documents required to be sent to the Board of Trade previously to the opening of a Railway is printed after the Railway Regulation Act, 1842. The Orders under the Railway Companies Act, 1867, the General Orders made by the Railway Commissioners under the Act of 1873, the Orders in Council under the Explosives Act, 1875, so far as they affect Railway Companies, and the Bye-laws approved by the Board of Trade under that Act, follow the Acts under which they were made. The Animals Order of 1886, so far as it affects Railway Companies, will be found before the Appendix. In the Appendix are printed so much of the Standing Orders of the House of Commons as appeared to be material, and also the Bye-laws regulating the conveyance of passengers upon Railways approved by the Board of Trade.

J. H. B. B.
H. S. T.

January, 1888.

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THE LAW OF RAILWAY COMPANIES.

THE CARRIERS ACT.

1 WILL. IV. c. 68.

An Act for the more effectual Protection of Mail Contractors, Stage Coach Proprietors, and other Common Carriers for Hire, against the Loss of or Injury to Parcels or Packages delivered to them for Conveyance or Custody, the Value and Contents of which shall not be declared to them by the Owners thereof. [23rd July, 1830.]

WHEREAS by reason of the frequent practice of bankers and others of sending by the public mails, stage coaches, waggons, vans, and other public conveyances by land for hire, parcels and packages containing money, bills, notes, jewellery, and other articles of great value in small compass, much valuable property is rendered liable to depredation, and the responsibility of mail contractors, stage coach proprietors, and common carriers for hire is greatly increased: And whereas through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents thereof, so as to enable such mail contractors, stage coach proprietors, and other common carriers, by due diligence, to protect themselves against losses arising from their legal responsibility, and the difficulty of fixing parties with knowledge of notices published by such mail contractors, stage coach proprietors, and other common carriers, with the intent to limit such responsibility, they have become exposed to great and unavoidable risks, and have thereby sustained heavy losses: Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this Act no mail contractor, stage coach proprietor, or other common carrier by land for hire shall be liable for the loss of or injury to any article or articles or property of the descriptions following; (that is to say,) gold or

1 WILL. IV.
c. 68, s. 1.

Mail contrac-
tors, coach
proprietors,
and carriers
not to be

**1 Will. IV.
c. 68, s. 1.**

liable for loss of certain goods above the value of 10l. unless delivered as such, and increased charge accepted.

[By the Carriers Act Amendment Act, 1865, 28 & 29 Vict. c. 94, lace is not to include machine-made lace.]

silver coin of this realm or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of the governor and company of the Banks of England, Scotland, and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes, or securities for payment of money, English or foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs, or lace, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger in any mail or stage coach or other public conveyance, when the value of such article or articles or property aforesaid contained in such parcel or package shall exceed the sum of ten pounds unless at the time of the delivery thereof at the office, warehouse, or receiving house of such mail contractor, stage coach proprietor, or other common carrier, or to his, her, or their book-keeper, coachman, or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

Effect of marginal notes on construction.

The marginal notes are not to be looked at for the purpose of construing the sections to which they are attached (*Clayton v. Green*, L. R. 3 C. P. 511; *A.-G. v. G. E. Ry. Co.*, 11 Ch. D. 449, pp. 460, 461, 465; *Sutton v. Sutton*, 22 Ch. D. 511, disapproving the suggestion thrown out in *In re Venour's Settled Estates*, 2 Ch. D. 522).

Carriers entitled to notice, but need not give notice of increased charges.

The liability of carriers of goods at common law will be found treated under the 89th section of the Railway Clauses Consolidation Act, 1845.

The carrier is entitled to notice of the value of goods within this section, whether they are delivered to him at his receiving office or elsewhere.

He is not bound to give the notice under section 2 in order to avail himself of the benefit of the Act, the notice under that section being merely a notice of what the extra charge is to be (*Hart v. Baxendale*, 7 Ex. 769).

Inn may be receiving-house.

An inn at which the carrier is in the habit of receiving parcels, has been held to be an office, warehouse, or receiving house within this section (*Syms v. Chaplin*, 5 A. & E. 634; 1 Nev. & P. 129; *Stephens v. L. & S. W. Ry. Co.*, 18 Q. B. D. 121).

Formal notice of nature of goods not necessary.

A formal notice of the nature of the goods is not necessary, if it is in fact brought to the notice of the company what the goods are, and their value is sufficiently stated to enable the carrier to fix the additional charge he is entitled to make (*Bradbury v. Sutton*, 19 W. R. 800; 21 W. R. 128).

Act applies to land

Where the carrier contracts to carry partly by land and partly by water, the contract is divisible, and the protection of this section applies to the land journey (*Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54; 35 L. J. Q. B. 40; 6 B. & S. 961; *Millen v. Brasch*, 8 Q. B. D. 35; 10 Q. B. D. 142).

Gross negligence.

The carrier is protected by this section even if there is gross negligence (*Hinton v. Dibdin*, 2 Q. B. 646).

Damage by goods being carried too far or not far enough.

The protection of this section extends to cases where the goods are put out at a station short of their destination or carried beyond it, or sent on a wrong journey altogether (*Morritt v. N. E. Ry. Co.*, 1 Q. B. D. 302; *Millen v. Brasch*, *supra*).

And it seems the section would also extend to cases of delivery to the wrong person by mistake. But it would not extend to a case where the goods are delivered to a person who is known not to be the consignee (*Morritt v. N. E. Ry. Co.*, 1 Q. B. D. 302, p. 308, per Blackburn, J.).

The protection of the section extends as well to a temporary as to a permanent loss, and damages cannot be recovered for the consequences of the loss in either case (*Wallace v. Dublin & Belfast Ry. Co.*, 1 R. 8 C. L. 341; *Millen v. Brasch*, 10 Q. B. D. 142).

1 Will. IV.
c. 68, s. 2.

The section does not protect against delay in delivery where there is no loss of the goods (*Hearn v. L. & S. W. Ry. Co.*, 10 Ex. 793; 24 L. J. Ex. 180. See *Pianciani v. L. & S. W. Ry. Co.*, 18 C. B. 226).

Temporary loss.

Delay where no loss.

If the value and nature of the articles is declared, the common law liability of the carrier revives, whether he demands an increased charge or not (*Behrens v. G. N. Ry. Co.*, 6 H. & N. 366; 7 *ib.* 950; 30 L. J. Ex. 153; 31 *ib.* 299).

If value declared, carrier liable.

A waggon containing articles of the kind mentioned in this section, but open at the top so that the company can see what the articles are, is "a parcel or package" within the section (*Whaite v. Lancashire & Yorkshire Ry. Co.*, L. R. 9 Ex. 67; 43 L. J. Ex. 47; 22 W. R. 374; 30 L. T. N. S. 272).

"Parcel or package."

The words in the preamble, "articles of great value in a small compass," do not limit the meaning of the words used in this section to articles of small size (*Owen v. Burnett*, 2 C. & M. 353; 4 Tyr. 133).

Small articles.

It is a question of fact for the jury whether the goods in question are within the description of the articles mentioned in this section (*Brunt v. Midland Ry. Co.*, 2 H. & C. 889; 33 L. J. Ex. 187; *Woodward v. L. & N. W. Ry. Co.*, 3 Ex. D. 121).

The following articles have been held to be within the words used in the section: ivory black and agate bracelets, shirt pins, common gilt rings, brooches, tortoiseshell purses, glass smelling bottles (*Bernstein v. Bazendale*, 6 C. B. N. S. 251; 28 L. J. C. P. 265); ivory fans (*A.-G. v. Harley*, 5 Russ. 173); a chronometer (*Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54; 35 L. J. Q. B. 40); maps with their cases (*Wyld v. Pickford*, 8 M. & W. 443); pictures with their frames (*Henderson v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 90; 39 L. J. Ex. 55); prints and coloured prints (*Boys v. Pink*, 8 C. & P. 361); a looking-glass (*Owen v. Burnett*, 2 C. & M. 353; 4 Tyr. 133); silk dresses (*Flower v. S. E. Ry. Co.*, 16 L. T. N. S. 329); silk tights and hose (*Hart v. Bazendale*, 6 Ex. 769; 20 L. J. Ex. 338); silk watch guards (*Bernstein v. Bazendale*, 6 C. B. N. S. 251; 28 L. J. C. P. 265); elastic silk webbing (*Brunt v. Midland Ry. Co.*, 2 H. & C. 889; 33 L. J. Ex. 187); and possibly the packing case, if it contained only articles within the section (*Treadwin v. G. E. Ry. Co.*, L. R. 3 C. P. 308).

Articles within the section.

On the other hand, the following articles have been held not within the section: German silver fuzee boxes (*Bernstein v. Bazendale*, 6 C. B. N. S. 251; 28 L. J. C. P. 265); a document in the form of a bill of exchange accepted by the person to whom it was directed, but having no drawer, and found by the jury to be of no value when delivered to the carriers (*Stoessiger v. S. E. Ry. Co.*, 3 E. & B. 549; 23 L. J. Q. B. 293); painted carpet designs (*Woodward v. L. & N. W. Ry. Co.*, 3 Ex. D. 121; 47 L. J. Ex. 263); the frame of a silk vestment not usually framed (*Treadwin v. G. E. Ry. Co.*, L. R. 3 C. P. 308; 37 L. J. C. P. 83); hat bodies made partly of fur, partly of wool (*Mayhew v. Nelson*, 6 C. & P. 58); a packing case containing some articles not within the section (*Treadwin v. G. E. Ry. Co.*, L. R. 3 C. P. 308; 37 L. J. C. P. 83).

Articles not within the section.

For the purposes of this section the value of the goods is the price the consignee has agreed to pay, and not the price at which the consignor bought them (*Blankenss v. L. & N. W. Ry. Co.*, 45 L. T. 761).

Value.

2. And it be further enacted, that when any parcel or package containing any of the articles above specified shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of ten pounds, it shall be lawful for such mail contractors, stage coach proprietors, and other common carriers to demand and receive an increased rate of charge, to be notified by some notice affixed in legible characters in some public and conspicuous part of the office, warehouse, or other receiving house where such parcels or packages are received by them for the purpose of conveyance, stating the increased rate of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles

When any parcel shall be so delivered an increased rate of charge may be demanded.

Notice of the same to be affixed in offices or warehouses.

1 Will. IV.
c. 68,
ss. 3—5.

as aforesaid at such office shall be bound by such notice, without further proof of the same having come to their knowledge.

See the notes to section 1, *ante*.

Carriers to
give receipts,
acknowledg-
ing increased
rate.

3. Provided always, and be it further enacted, that when the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge or accepting such agreement shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the male contractor, stage coach proprietor, or other common carrier as aforesaid shall not have or be entitled to any benefit or advantage under this Act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge.

In case of
neglect to give
receipt or
affix notice,
the party not
to be entitled
to benefit of
this Act.

See the notes to section 1, *ante*.

Publication
of notices not
to limit the
liability of
proprietors,
&c., in respect
of any other
goods con-
veyed.

4. Provided always, and be it enacted, that from and after the first day of September now next ensuing no public notice or declaration heretofore made or hereafter to be made shall be deemed or construed to limit or in anywise affect the liability at common law of any such mail contractors, stage coach proprietors, or other public common carriers as aforesaid for or in respect of any articles or goods to be carried and conveyed by them; but that all and every such mail contractors, stage coach proprietors, and other common carriers as aforesaid shall from and after the said first day of September be liable, as at the common law, to answer for the loss of (*sic*) any injury to any articles and goods in respect whereof they may not be entitled to the benefit of this Act, any public notice or declaration by them made and given contrary thereto, or in anywise limiting such liability notwithstanding.

What is a
special con-
tract.

A ticket or paper with printed conditions upon it of which the consignor has notice, whether signed by him or not, is a special contract within section 5, and not a public notice under this section (*G. N. Ry. Co. v. Morville*, 21 L. J. Q. B. 319; *Walker v. York & N. Mid. Ry. Co.*, 2 E. & B. 750; *York, Newcastle, & Berwick Ry. Co. v. Criesp*, 14 C. B. 527; 23 L. J. C. P. 125).

Every office
used to be
deemed a
receiving
house;
and any one
coach pro-
prietor or
carrier shall
be liable to be
sued.

5. And be it further enacted, that for the purposes of this Act every office, warehouse, or receiving house which shall be used or appointed by any mail contractor or stage coach proprietor or other such common carrier as aforesaid for the receiving of parcels to be conveyed as aforesaid, shall be deemed and taken to be the receiving house, warehouse, or office of such mail contractor, stage coach proprietor, or other common carrier; and that any one or more of such mail contractors, stage coach proprietors, or common carriers shall be liable to be sued by his, her, or their name or names only; and that no action or suit commenced to recover

damages for loss or injury to any parcel, package, or person shall abate for the want of joining any co-proprietor or co-partner in such mail, stage coach, or other public conveyance by land for hire as aforesaid.

1 Will. IV.
c. 63, ss. 6-8.

See notes to section 1, *ante*.

6. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to annul or in anywise affect any special contract between such mail contractor, stage coach proprietor, or common carrier, and any other parties for the conveyance of goods and merchandizes.

Not to affect contracts.

As to what is a special contract, see *ante*, section 4. A special contract will not exclude the company from the benefit of section 1 unless there is something in the terms of the contract inconsistent with that section (*Basendals v. G. E. Ry. Co.*, L. R. 4 Q. B. 244; 38 L. J. Q. B. 137).

Special contract does not exclude protection of section 1.

7. Provided also, and be it further enacted, that where any parcel or package shall have been delivered at any such office, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcels or packages shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charges so paid as aforesaid, in addition to the value of such parcel or package.

Parties entitled to damages for loss may also recover back extra charges.

8. Provided also, and be it further enacted, that nothing in this Act shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire from liability to answer for loss or injury to any goods or articles whatsoever arising from the felonious acts of any coachman, guard, book-keeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, book-keeper, or other servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct.

Nothing herein to protect felonious acts.

Where a felony is set up as an answer to a defence under this Act the question of negligence is immaterial (*G. W. Ry. Co. v. Rimell*, 18 C. B. 575; *Metcalf v. London & Brighton Ry. Co.*, 4 C. B. N. S. 307).

A servant of the delivering agent of the company is a servant of the company within this section, though when he commits the felony he is not acting on behalf of the company (*Machus v. L. & S. W. Ry. Co.*, 2 Ex. 415; 17 L. J. Ex. 271; *Stephens v. L. & S. W. Ry. Co.*, 18 Q. B. D. 121).

Who is a servant of the company.

Where a person by falsely representing himself to be the servant of the company obtains goods from a clerk of the company, the company are not estopped from denying that he is their agent (*Way v. G. N. Ry. Co.*, 1 Q. B. D. 693; 45 L. J. Q. B. 874).

A person setting up the felony of a servant of the company need not bring such evidence as would suffice to convict a particular servant.

Evidence of felony.

It is enough if he makes out a *prima facie* case that the goods were stolen by the servants of the company. If having made out a *prima facie* case, the company leave it unanswered, he is entitled to succeed (*Vaughton v. L. & N. W. Ry. Co.*, L. R. 9 Ex. 93; 43 L. J. Ex. 75; *M'Queen v. G. W. Ry. Co.*, L. R. 10 Q. B. 569).

A *prima facie* case is not made out merely by showing that the goods have been delivered to the company and been lost, or that a portion of them has been abstracted (*G. W. Ry. Co. v. Rimell*, 18 C. B. 575; 27 L. J. C. P. 201; *Metcalf v. London & Brighton Ry. Co.*, 4 C. B. N. S. 307; 27 L. J. C. P. 205).

What evidence is sufficient.

The fact that the goods were last seen in the possession of a porter of the com-

1 Will. IV.
c. 68,
ss. 9—11.

Easier access
by servants of
company.

pany, who carried them across the line in the ordinary course of his duty, is no evidence against the company (*Gogarty v. G. S. & W. Ry. Co.*, 1 R. 9 C. L. 233).

Nor is it sufficient to show that it is more probable that the goods were stolen by the servants of the company, on the ground that they had greater facilities of access to the goods than persons not in the company's employ (*M'Queen v. G. W. Ry. Co.*, L. R. 10 Q. B. 569; 44 L. J. Q. B. 130; *Turner v. G. W. Ry. Co.*, 34 L. T. N. S. 22).

On the other hand, if any of the stolen goods are traced to the possession of a servant of the company, who deals with them as his own, and his possession of them is not accounted for, a *prima facie* case is made out (*Boyce v. Chapman*, 2 Bing. N. C. 222; *Vaughton v. L. & N. W. Ry. Co.*, L. R. 9 Ex. 93; 43 L. J. Ex. 75).

Evidence
admissible
against the
company.

A statement by a station-master to a constable that a parcel is missing, and that a servant of the company to whom the parcel would have been delivered has absconded, followed by a request to make inquiries after him, is admissible in evidence against the company to prove the theft (*Kirkstall Brewery Co. v. Furness Ry. Co.*, L. R. 9 Q. B. 468; 43 L. J. Q. B. 142).

Coach pro-
prietors and
carriers liable
only to such
damages as
are proved.

9. Provided also, and be it further enacted, that such mail contractors, stage coach proprietors, or other common carriers for hire shall not be concluded as to the value of any such parcel or package by the value so declared as aforesaid, but that he or they shall in all cases be entitled to require, from the party suing in respect of any loss or injury, proof of the actual value of the contents by the ordinary legal evidence, and that the mail contractors, stage coach proprietors, or other common carriers as aforesaid, shall be liable to such damages only as shall be so proved as aforesaid, not exceeding the declared value, together with the increased charges as before mentioned.

Money may
be paid into
Court in all
actions for
loss of goods.

10. And be it further enacted, that in all actions to be brought against any such mail contractor, stage coach proprietor, or other common carrier as aforesaid, for the loss of or injury to any goods delivered to be carried, whether the value of such goods shall have been declared or not, it shall be lawful for the defendant or defendants to pay money into court in the same manner and with the same effect as money may be paid into court in any other action.

Public Act.

11. And be it further enacted, that this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

CUSTODY OF DOCUMENTS.

1 VICT. c. 83.

An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.

1 Vict.
c. 83, s. 1.

[17th July, 1837.]

WHEREAS the houses of parliament are in the habit of requiring that, previous to the introduction of any bill into parliament for making certain bridges, turnpike roads, cuts, canals, reservoirs, aqueducts, waterworks, navigations, tunnels, archways, railways, piers, ports, harbours, ferries, docks, and other works, to be made under the authority of parliament, certain maps or plans and sections, and books and writings, or extracts or copies of or from certain maps, plans, or sections, books, and writings, shall be deposited in the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the sheriff clerk of every county in Scotland, in which such work is proposed to be made, and also with the parish clerk of every parish in England, the schoolmaster of every parish of Scotland, or in royal burghs with the town clerk, and the postmaster of the post town in or nearest to every parish in Ireland, in which such work is intended to be made, and with other persons: And whereas it is expedient that such maps, plans, sections, books, writings, and copies or extracts of and from the same, should be received by the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in the present parliament assembled, and by the authority of the same, that whenever either of the houses of parliament shall by its standing orders, already made or hereafter to be made, require that any such maps, plans, sections, books, or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively

Clerks of the peace, &c., to receive the documents herein mentioned, and retain them for the purposes directed by the standing orders of the houses of parliament.

1 Vict. c. 83,
ss. 2, 3.

directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner, and for the purposes, and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and endorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

Clerks of the peace, &c., to permit such documents to be inspected or copied by persons interested.

2. And be it further enacted, that all persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

Clerks of the peace, &c., for every omission to comply with the provisions of this Act, liable to the penalty of 5*l.* to be recovered in a summary way.

3. And be it further enacted, that in case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this Act to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited.

CONSTABLES NEAR PUBLIC WORKS.

1 & 2 VICT. c. 80.

An Act for the payment of Constables for keeping the Peace near Public Works.

[10th August, 1838.]

1 & 2 Vict.
c. 80, s. 1.

WHEREAS great mischiefs have arisen by the outrageous and unlawful behaviour of labourers and others employed on railroads, canals, and other public works, by reason whereof the appointment of special constables is often necessary for keeping the peace, and for the protection of the inhabitants and security of the property in the neighbourhood of such public works, whereby great expenses have been cast upon the public rates of counties and other districts chargeable with such expenses: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the passing of this Act, whenever any special constables shall be appointed under the authority of an Act passed in the second year of the reign of his late majesty, intituled "An Act for amending the laws relative to the appointment of special constables, and for the better preservation of the peace," or under the authority of an Act passed in the sixth year of the reign of his late majesty, intituled "An Act for enlarging the powers of magistrates in the appointment of special constables," and it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or of any liberty, franchise, city, town, or borough, in England or Wales, on the oath of three or more credible witnesses, that the appointment of such special constables has been occasioned by the behaviour, or by reasonable apprehension of the behaviour, of the persons employed upon any railway, canal, or other public work made or carried on under the authority of parliament within the district or division for which such justices usually act, it shall be lawful for such justices as aforesaid, at any time not exceeding one calendar month next after such appointment, to make orders from time to time upon the treasurer or other officer who shall have the control or custody of the funds of any company making or carrying on such railroad, canal, or other public work, for the payment of such reasonable allowances for their trouble, loss of time, and expenses to such special constables who shall have so served or be then serving as to the said justices shall seem proper; and a copy of every such

Whenever the appointment of special constables has been occasioned by the behaviour of persons employed upon public works, the expenses thereof shall be paid by the companies carrying on such works.

1 & 2 Vict.
c. 80, ss. 2—4.

order shall be sent by the justices to one of her majesty's principal secretaries of state, and such order, if allowed by the secretary of state, shall be binding on such company, and on every such treasurer and officer thereof: provided always, that nothing herein contained shall empower any such justices to order any allowance for any such special constables at the rate of more than five shillings daily to be paid to each special constable employed for the purposes aforesaid.

Order not
made without
notice to
company.

An order cannot be made under this section by justices without notice to the company, and an opportunity being given them of being heard (*R. v. Cheshire Line Committee*, L. R. 8 Q. B. 344; 42 L. J. M. C. 100).

Secretary of
state may
reduce exces-
sive orders.

2. And be it enacted, that if it shall appear to the secretary of state that there was no need for the appointment of such special constables, or that a greater number of special constables was appointed than was needed by reason of the behaviour, or reasonable apprehension of the behaviour, of the persons employed on such railroad, canal, or other public work as aforesaid, the secretary of state shall have power to disallow any such order, or to reduce the amount ordered to be paid by any such order, in such manner as to him shall seem just according to the circumstances of each case; and in such case the order shall be of no force, or shall be of force for such reduced amount only, as the case may be; and the whole of such expenses in case the whole shall be disallowed, or so much thereof as shall exceed such reduced amount if a part shall be allowed, shall be defrayed out of the public rates of such county, riding, or division, liberty, franchise, city, town, or borough, as if this Act had not been made.

Amount
ordered and
allowed may
be recovered
by distress.

3. And be it enacted, that in all cases where such treasurer or other officer as aforesaid shall refuse or neglect, during three weeks next after demand thereof, to pay such sum of money as shall have been ordered by such justices, and allowed by the secretary of state as aforesaid, it shall be lawful for such justices to cause the same to be levied by distress upon the goods and chattels belonging to such company.

Act may be
amended or
repealed.

[4 is repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96.]

CONVEYANCE OF MAILS.

1 & 2 VICT. c. 98.

An Act to provide for the Conveyance of the Mails by Railways.

[14th August, 1838.]

1 & 2 Vict.
c. 98, s. 1.

WHEREAS it is expedient that provision should be made by law for the conveyance of the mails by railways at a reasonable rate of charge to the public: Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases of railways already made or in progress or to be hereafter made within the United Kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the postmaster-general, by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter bags shall from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as need may be, at such hours or times in the day or night as the postmaster-general shall direct, together with the guards appointed and employed by the postmaster-general in charge thereof, and any other officers of the post office; and thereupon the said company shall, from and after the day to be named in such notice, at their own costs, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter bags to the satisfaction of the postmaster-general, and receive, take up, carry, and convey by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter bags as shall for that purpose be tendered to them, or any of their officers, servants or agents, by any officer of the post office, and also receive, take up, carry, and convey, in and upon the carriages carrying such mails or post letter bags, the guards in charge thereof, and any other officers of the post office, and shall receive, take up, deliver, and leave such mails or post letter bags, guards, and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages,

Postmaster-general may require railway companies to convey the mails.

[By 31 & 32 Vict. c. 119, s. 37, the signature of a secretary or assistant-secretary or officer appointed for the purpose is sufficient.]

[By 7 & 8 Vict. c. 85, s. 11, postmaster-general may send mails by ordinary train. By 31 & 32 Vict. c. 119, ss. 36, 37, postmaster-general may require special train to be exclusively appropriated to post-office, and see 36 & 37 Vict. c. 48, ss. 18—20.] [By 10 & 11 Vict. c. 85, s. 16, mails may be sent without a guard.]

1 & 2 Vict.
c. 98, ss. 3-4.

[By 7 & 8
Vict. c. 85,
s. 11, post-
master-
general may
require any
speed certified
safe, not
exceeding 27
miles an
hour.]

Servant of the
post-office
may sue.

If required,
carriage to
be applied
exclusively to
such convey-
ance.

Railway
company, if
required, to
provide sepa-
rate carriage
for sorting
letters.

Postmaster-
general may
direct mails to
be carried on
railway mail
coaches, in
lieu of com-
pany's
carriages.

and times of arrival, as the postmaster-general shall in that behalf from time to time order or direct: provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months previous notice shall be given to the postmaster-general of any such intended alteration.

An officer of the post office travelling with the mails under this section, is entitled to maintain an action for negligence against the company (*Collett v. L. & N. W. Ry. Co.*, 20 L. J. Q. B. 411; 16 Q. B. 984).

2. And be it enacted, that it shall be lawful for the postmaster-general (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter bags shall be exclusively appropriated for the purpose of carrying the mails.

3. And be it enacted, that the company of proprietors of any such railway shall, on being required so to do by the postmaster-general, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the postmaster-general, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the postmaster-general shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last-mentioned carriage or carriages all such post letter bags and officers of the post office as the postmaster-general shall reasonably require, and shall deliver and leave any post letter bags and officers of the post office at such places on the line of the railway as the postmaster-general shall in that behalf from time to time reasonably order and direct.

4. And be it enacted, that in case the postmaster-general shall at any time be desirous of sending by any such railway any of her majesty's mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, instead of sending the said mails or post letter bags, guards, and officers of the post office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the postmaster-general, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the postmaster-general as hereinbefore mentioned.

5. And be it enacted, that for the greater security of the mails or post letter bags so to be carried or conveyed by railways the company of proprietors of such respective railways along which such mails or post letter bags, mail coaches, or carts and carriages for sorting letters shall be so required by the postmaster-general to be conveyed, and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter bags, guards, and officers of the post office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the postmaster-general, or such officer of the post office as he shall nominate in that behalf, shall in his discretion from time to time give or make: provided always, that it shall not be lawful for any officer or servant of the post office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter bags shall be conveyed; but if any cause of complaint shall arise the same shall be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station upon the railway; and in case of any default or neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the postmaster-general or other officer of the post office so to be nominated as aforesaid the railway company shall be wholly responsible for the same.

1 & 2 Vict.
c. 98, ss. 5-7.

Railway companies to be subject to directions of post-office respecting conveyance of mails.

6. And be it enacted, that every company of proprietors of any railway along which such mails or post letter bags, mail coaches, carts, or carriages shall be so required by the postmaster-general to be conveyed, shall be entitled to such reasonable remuneration to be paid by the postmaster-general to any such company of proprietors for the conveyance of such mails, post letter bags, mail guards, and other officers of the post office, mail coaches, carts, and carriages, in manner required by such postmaster-general, or by such officer of the post office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the postmaster-general and such company of proprietors, or in case of difference of opinion between them then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the postmaster-general, or by such officer of the post office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said postmaster-general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been made.

Remuneration to railway companies for conveyance of mails.

7. And be it enacted, that notwithstanding any agreement entered into between the postmaster-general and any such company,

Agreements between postmaster-

1 & 2 Vict.
c. 36, ss. 8—9.

general and
railway com-
panies as to
amount of
remuneration,
&c., may be
altered.

or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the postmaster-general, by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as hereinafter provided, a fresh agreement shall be entered into between the postmaster-general and such company, regulating the future amount of remuneration to be paid by the postmaster-general to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the postmaster-general to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the postmaster-general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

Postmaster-general may terminate services of railway companies on notice;

[See marginal note to section 1, *ante*.]

8. And be it enacted, that it shall be lawful for the postmaster-general and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months previous notice that such services, or any part thereof, shall cease and determine; and thereupon, at the expiration of such six calendar months notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine.

or may terminate services of railway companies without notice, subject to certain conditions.

[See marginal note to section 1, *ante*.]

9. And be it enacted, that it shall be lawful for the postmaster-general at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: provided nevertheless, that in case the postmaster-general shall, without giving six calendar months notice as aforesaid, at any time

determine the services to be required by the postmaster-general of any company of proprietors, or any part of such services, without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the postmaster-general, or the breach by such company of proprietors of any of their engagements with the postmaster-general, then and in any such case the postmaster-general shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof in case the parties differ about the same, shall be ascertained by arbitration as hereinafter mentioned.

1 & 2 Vict.
c. 98,
ss. 10-12.

10. And be it enacted, that on all carriages to be provided for the service of the post office on any such railway there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the post office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

Royal arms to be painted on engines or carriages provided for the service of the post-office.

11. And be it enacted, that it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against or be contrary or repugnant to any of the enactments herein contained; and that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the postmaster-general signifying to the said company his intention that the mails or post letter bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such bye-laws, orders, rules, and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules, or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

Bye-laws of railway companies not to be repugnant to provisions of Act.

12. And be it enacted, that if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter bags, when tendered to them for such purpose by the postmaster-general or any officer of the post office, or shall refuse to carry on their railway any mail coaches, carts, or carriages as hereinbefore provided, when so required by the postmaster-general, or shall refuse or neglect to receive, take up, deliver, and leave any such mails or post letter bags, mail guards, or other officers of the post office, mail coaches, carts, or carriages; at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the postmaster-general shall from time to time

Penalty for refusing or neglecting to convey mails.

1 & 2 Vict.
c. 98, s. 13.

reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter bags, mail coaches, carts, and carriages on any such railways as the postmaster-general, or such officer of the post office as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

Postmaster-general may require railway companies to give security by bond.

13. And be it enacted, that it shall be lawful for the postmaster-general, if he shall so think fit, to require the company of proprietors of any railway already made or in progress or to be hereafter made within the United Kingdom to give security by bond to her majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter bags, mail guards, and other officers of the post office, mail coaches, carts, and carriages in manner hereinbefore mentioned, when thereunto required by the postmaster-general, or any officer of the post office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter bags, guards and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the postmaster-general shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things as by this Act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be taken in such sum and in such form as the postmaster-general shall think proper; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, and also whenever and so often as the postmaster-general shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the postmaster-general, to execute to her majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond whenever and so often as the same shall by or in pursuance of this Act be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there

shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

1 & 2 Vict.
c. 98,
ss. 14-16.

Under this section, a railway company was ordered to execute a bond without any proviso protecting them in case of being prevented performing their duty by reason of the neglect of a servant of the post office (*Att.-Gen. v. L. & N. W. Ry. Co.*, Johns. 29).

Persons required to give security by bond to the post office may, with the consent of the lords of the treasury, or any three of them, transfer to or deposit with the postmaster-general, stock or exchequer bills for such an amount as in the judgment of such lords shall be sufficient security against the contravention of the duty for the performance of which such security is required (6 & 7 Wm. 4, c. 28, s. 1; 1 & 2 Vict. c. 61).

14. Provided always, and be it enacted, that in all cases in which any railway or part of a railway may, previous to the passing of this Act, have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall during the continuance of such lease be liable to all the provisions of this Act, for or in respect of such railway or part of a railway, in lieu of such company of proprietors, but so that such lessees (not being a body corporate or company), their executors, administrators, or assigns, shall not be required in respect of any such railway or part of a railway to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suit.

Lessees of railway, not being a body corporate or company, not to be required to give security by bond above 1,000*l*.

15. And be it enacted, that all notices, under the provisions of this Act by or on behalf of the postmaster-general to any company of proprietors of any railway as aforesaid, shall be considered as duly served on any company of proprietors in case the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

Service of notices.

16. And be it enacted, that in all cases in which the postmaster-general and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the postmaster-general to such company of proprietors for any services performed or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the postmaster-general, and the other by such company; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry; and the said award or umpirage, as the case may be, shall be binding

For settling differences between postmaster-general and railway companies in certain cases.

1 & 2 Vict.
c. 98,
ss. 17—19.

and conclusive on the said parties, and their respective successors and assigns.

Railroad companies, after contracts have existed for a certain period, may refer them to arbitrators to decide as to their continuance.

17. And be it enacted, that after any contract entered into or award made under the authority of this Act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein; and thereupon such arbitrators or umpire to be appointed as hereinbefore mentioned shall proceed to inquire into the circumstances, and make their award therein, as in the case of an original agreement: Provided always, that the services performed by such railway company for the post office shall in nowise be interrupted or impeded thereby.

Nomination of arbitrators to be within a limited time after application for references made.

18. And be it enacted, that in all references to be made under the authority of this Act the postmaster-general, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or in default it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so *toties quoties*.

Construction of terms.

19. And be it enacted, that whenever the term "company of proprietors," or "railway company" or "company" is used in this Act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate or company or individuals, to whom any railway or part of a railway may previous to the passing of this Act have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this Act shall be construed according to the respective interpretations of the terms and expressions contained in an Act passed in the first year of the reign of her present majesty, intituled "An Act for consolidating the laws relative to offences against the post office of the United Kingdom, and for regulating the judicial administration of the post office laws, and for explaining certain terms and expressions em-

1 Vict. c. 36.

ployed in those laws," so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions; and that this present Act shall be deemed and construed to be a Post Office Act within the intent and meaning of the said last-mentioned Act; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the Post Office Acts: Provided, nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this Act shall have been incurred, shall and may hear and determine any offence against this Act which may subject any company to a pecuniary penalty not exceeding twenty pounds; and a summons issued under the Post Office Acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

1 & 2 Vict.
c. 98, s. 19.

[20 is repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96.]

GATES AT LEVEL CROSSINGS.

2 & 3 VICT. c. 45.

2 & 3 Vict.
c. 45, s. 1.

An Act to amend an Act of the fifth and sixth years of the reign of His late Majesty King William the Fourth relating to Highways. [17th August, 1839.]

5 & 6 Wm. 4,
c. 50.

WHEREAS by an Act passed in the session of parliament holden in the fifth and sixth years of the reign of his late majesty king William the Fourth, intituled "An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England," it is amongst other things by the said Act enacted, that whenever a railroad shall cross any highway for carts or carriages, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to attend to the opening and shutting of such gates, so that the persons, carts, or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad, and any complaint for any neglect in respect of the said gates shall be made within one month after the said neglect to one justice, who may summon the party so complained against to appear before the justices at their next special sessions for the highways, who shall hear and decide upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds: And whereas it is also by the said Act further enacted, that nothing in this Act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchyards, or pavements which now are or may hereafter be paved, repaired, or cleansed, broken up, or diverted, under or by virtue of the provisions of any local or personal Act or Acts of parliament: And whereas it is deemed expedient to amend the said provisions in the said Act, and to extend the same to turnpike roads in England: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that wherever a railroad crosses or shall hereafter cross any turnpike road or any highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid at each of the said crossings, and

Proprietors of railroad to maintain gates where any railroad crosses the highway, &c. [This obligation is enforced by 5 & 6 Vict. c. 55, s. 9, and 8 Vict. c. 20, s. 47.]

shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or if in Scotland to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty session or court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pounds, together with such costs as to the justices or sheriff depute aforesaid before whom the conviction shall take place shall seem fit.

2 & 3 Vict.
c. 45, s. 2.

By 26 & 27
Vict. c. 92, s.
7, Board of
of Trade may
require a
bridge.]

Penalty 5l. for
each day's
neglect.

See the notes to 5 & 6 Vict. c. 55, s. 9, and to the Railways Clauses Act, 1845, s. 47, *post*.

2. And be it further enacted, that the penalties by this Act imposed, and the costs to be allowed and ordered by the authority of this Act, shall in England be recovered and applied in the same manner as any penalties and costs under the said Act, and in Scotland shall be recovered and applied to the maintenance of the statute labour roads within the district where the offence is committed.

How penalties
shall be re-
covered and
applied.

[3 is repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96.]

THE RAILWAY REGULATION ACT, 1840.

3 & 4 VICT. c. 97.

3 & 4 Vict.
c. 97,
ss. 1—7.

An Act for Regulating Railways. [10th August, 1840.]

WHEREAS it is expedient for the safety of the public to provide for the due supervision of railways :

[1 and 2 are recited in and repealed by 5 & 6 Vict. c. 55, s. 3, post, and are also repealed by 34 & 35 Vict. c. 78, s. 17.]

3. And be it enacted, that the lords of the said * committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the lords of the said committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway ; and if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same ; and every such penalty may be recovered in any of her majesty's courts of record : Provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings.

Penalty for making false returns.

4. And be it enacted, that every officer of any company who shall wilfully make any false return to the lords of the said committee shall be deemed guilty of a misdemeanor.

[5 and 6 are repealed by 34 & 35 Vict. c. 78, s. 17.]

Copies of existing bye-laws to be laid before the Board of Trade ;

7. And whereas many railway companies are or may hereafter be empowered by Act of parliament to make bye-laws, orders, rules, or regulations, and to impose penalties for the enforcement thereof, upon persons other than the servants of the said companies, and it is expedient that such powers should be under proper

control; be it enacted, that true copies of all such bye-laws, orders, rules, and regulations made under any such powers by every such company before the passing of this Act, certified in such manner as the lords of the said committee shall from time to time direct, shall, within two calendar months after the passing of this Act, be laid before the lords of the said committee; and that every such bye-law, order, rule, or regulation, not so laid before the lords of the said committee within the aforesaid period, shall, from and after that period, cease to have any force or effect, saving in so far as any penalty may have been then already incurred under the same.

3 & 4 Vict.
c. 97,
ss. 8—13.

otherwise to
be void.

8. And be it enacted, that no such bye-law, order, rule, or regulation made under any such power, and which shall not be in force at the time of the passing of this Act, and no order, rule, or regulation annulling any such existing bye-law, rule, order, or regulation which shall be made after the passing of this Act, shall have any force or effect until two calendar months after a true copy of such bye-law, order, rule, or regulation, certified as aforesaid, shall have been laid before the lords of the said committee, unless the lords of the said committee shall, before such period, signify their approbation thereof.

No future
bye-laws to
be valid till
two calendar
months after
they have
been laid
before the
Board of
Trade.
[Referred to
in 8 Vict. c.
20, s. 109.]

9. And be it enacted, that it shall be lawful for the lords of the said committee, at any time either before or after any bye-law, order, rule, or regulation shall have been laid before them as aforesaid shall have come into operation, to notify to the company who shall have made the same their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force; and no bye-law, order, rule, or regulation which shall be so disallowed shall have any force or effect whatsoever, or, if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same.

Board of
Trade may
disallow bye-
laws.

[10 is repealed by 34 & 35 Vict. c. 78, s. 17; 11 is repealed by 7 & 8 Vict. c. 85, s. 16, and by 34 & 35 Vict. c. 78, s. 17; 12 is repealed by 34 & 35 Vict. c. 78, s. 17.]

13. And be it enacted, that it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, guard, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye-laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof

Punishment
of servants of
railway com-
panies guilty
of misconduct.
[See 5 & 6
Vict. c. 55, s.
17, post.]

3 & 4 Vict.
c. 97,
ss. 14—16.

respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, or other servant so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this Act; and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made, upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid.

Some words at the end of the section, which are repealed by the Summary Jurisdiction Act, 1884, have been omitted.

A person placing a truck across the line in such manner, that a carriage or engine, if it came along the line, would be obstructed and the safety of the passengers endangered, is guilty of a misdemeanour under this section, though the line is not open for passenger traffic, and no carriage or engine has been obstructed (*Reg. v. Bradford*, 29 L. J. M. C. 171; *Bell's C. C.* 268).

Justice of the peace empowered to send any case to be tried by the quarter sessions.

14. Provided always, and be it enacted, that (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of complaint summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of her majesty's gaols or houses of correction in the said county or place in the meantime, or to take bail for his appearance, with or without sureties, in his discretion; and every such person so offending, and convicted before such court of quarter sessions as aforesaid (which said court is hereby required to take cognizance of and hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

[15 is repealed by 34 & 35 Vict. c. 78, s. 17.]

For punishment of persons obstructing the officers of any railway company, or trespassing upon any railway.

16. And be it enacted, that if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith, and shall

refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him upon oath, to take cognizance thereof, and to act summarily in the premises), shall, in the discretion of such justice, forfeit to her majesty any sum not exceeding five pounds, and in default of payment thereof shall or may be imprisoned.

3 & 4 Vict.
c. 97,
ss. 17, 18.

Some words at the end of the section, which are repealed by the Summary Jurisdiction Act, 1884, have been omitted.

A cab-driver who refuses to leave the company's premises when requested to do so, may be convicted under this section, although he believes that he is entitled to remain because other drivers are allowed to remain upon certain terms (*Foulger v. Steadman*, L. R. 8 Q. B. 65; 42 L. J. M. C. 3).

The justices cannot acquit a driver, who after request to go, wilfully trespasses upon the railway station, on the ground that his exclusion from the station is an undue preference under the Railway and Canal Traffic Act, the remedy under that Act being by application to the Railway Commissioners (*Hole v. Digby*, 27 W. R. 884).

When a man was charged under this section with wilfully trespassing on railway premises because he had allowed his van to stand for twenty minutes outside a public-house, upon ground which was part of the premises of the railway company whose station was close to the public-house, but which was the only access to the public-house, and was used by its customers when they went there with vehicles; it was held by the justices that their jurisdiction was ousted, as the claim to use the ground as a customer of the public-house was *bond fide*. And upon a case stated, their conclusion was held to be a proper one (*Wilkinson v. Gaffin*, 33 L. T. N. S. 824).

Justices have no jurisdiction when a *bond fide* right is set up.

17. And be it enacted, that no proceeding to be had and taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by certiorari, or by any other writ or process whatsoever, into any of her majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

Proceedings not to be quashed for want of form, or removed into the superior courts.

18. And whereas many railway companies are bound, by the provisions of the Acts of parliament by which they are incorporated or regulated, to make, at the expense of the owner or occupier of lands adjoining the railway, openings in the ledges or flanches thereof (except at certain places on such railway in the said Acts specified), for effecting communications between such railway and any collateral or branch railway to be laid down over such lands, and any disagreement or difference which shall arise as to the proper places for making any such openings in the ledges or flanches is by such Acts directed to be referred to the decision of any two justices of the peace within their respective jurisdictions: and whereas it is expedient that so much of every clause, provision, and enactment in any Act of parliament heretofore passed, as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper

Repeal of all provisions in railway acts that empower two justices to decide disputes respecting the proper places for openings in the ledges or flanches of railways.

**3 & 4 Vict.
c. 87,
ss. 19—21.**

places for any such openings in the ledges or flanches of any railway, should be repealed; be it therefore enacted, that so much of every such clause, provision, and enactment as aforesaid shall be repealed.

Board of
Trade to
determine
such disputes
in future.

19. And be it enacted, that in case any disagreement or difference shall arise between any such owner or occupier, or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway (except at such places as aforesaid), for the purpose of such communication, then the same shall be left to the decision of the lords of the said committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties.

[**20** is repealed by 31 & 32 Vict. c. 119, s. 47, and by 34 & 35 Vict. c. 78, s. 17.]

Meaning of
the words
"railway",
and "com-
pany."

21. And be it enacted, that wherever the word "railway" is used in this Act it shall be construed to extend to all railways constructed under the powers of any Act of parliament, and intended for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and wherever the word "company" is used in this Act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless the subject or context be repugnant to such construction.

THE RAILWAY REGULATION ACT, 1842.

5 & 6 VICT. c. 55.

An Act for the better Regulation of Railways and for the Conveyance of Troops. [30th July, 1842.] 5 & 6 Vict.
c. 55,
ss. 1-4.

WHEREAS by an Act passed in the third and fourth years of the reign of her present majesty, intituled "An Act for regulating railways," provision was made for the supervision of railways: And whereas it is expedient for the safety of the public to make further provision for that purpose; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same.

[1 is repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96.]

2. And be it enacted, that the provisions of the said recited Act and of this Act shall be construed together as one Act, except so far as the provisions of the said recited Act are hereby repealed, or shall be inconsistent with the provisions of this Act.

Recited Act
and this Act
to be con-
strued
together.

[3 is repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96.]

4. And be it enacted, that no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her majesty's privy council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers and ready for inspection.

Notice of
intended
opening of
railway.
[Sections
4-6 are ex-
tended to new
works by 34
& 35 Vict.
c. 78, s. 5.]

Under this section, no railway or portion of a railway can be opened without notice to the Board of Trade (see *A.-G. v. G. W. Ry. Co.*, 7 Ch. 767).

Railway can-
not be opened
without notice
to Board of
Trade.

The documents required to be sent to the Board of Trade previously to the second notice of the intention to open a railway, will be found stated in the memorandum printed immediately after this Act (see p. 35, *post*).

The sanction of the Board of Trade is not required to a mere slight variation in the way a particular line of rails is laid, but a new line of rails is within the section, as part of a railway (*A.-G. v. Oxford, Worcester & Wolverhampton Ry. Co.*, 2 W. R. 330; *A.-G. v. G. W. Ry. Co.*, 7 Ch. 767).

Slight varia-
tion is not
within the
section.

5 & 6 Vict.
c. 55,
ss. 5-8.

If the section is not complied with, the working of the line may be stopped by injunction (*ibid.*).

Upon an information under this section, the court allowed evidence involving elaborate statistics as to the number of passengers carried, the fares charged, the tickets issued, and the like, to be taken *virâ voce* under rule 10, clause 2 of the Exchequer Rules (*A.-G. v. Metropolitan District Ry. Co.*, 5 Ex. D. 218).

If railway
opened with-
out notice,
company to
forfeit 20l.

5. And be it enacted, that if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of her majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland.

Board of
Trade em-
powered to
postpone the
opening.

6. And be it enacted, that if the officer or officers appointed by the lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the lords of the said committee, and so from time to time, as often as such officers shall, after further inspection thereof, so report, to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the lords of the said committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the lords of the said committee, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of her majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland: Provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

[By 36 & 37
Vict. c. 76,
s. 6, the
opening may
be postponed
without
further
inspection,
unless the
company
obeys requi-
sition of the
officer.]

If the inspector has reported that the opening of the railway will be attended with danger, and has given reasons for his conclusion, upon which the Board of Trade act, the court will not examine into the matter, though the reasons given by the inspector may show the conclusion to be erroneous. (*A.-G. v. G. W. Ry. Co.*, 4 Ch. D. 735; 46 L. J. Ch. 735, where the inspector found the works incomplete because there was no station on the line inspected, and a neighbouring station on a line with which the inspected line formed a junction was insufficient).

[7 & 8 are repealed by 34 & 35 Vict. c. 78, s. 17.]

Gates at level
crossings to

9. And whereas by an Act passed in the second and third

years of her present majesty, and intituled "An Act to amend an Act of the fifth and sixth years of his late majesty king William the Fourth relating to highways," it was enacted, that whenever a railway crosses or shall hereafter cross any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway: And whereas by the Acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road: And whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway; be it therefore enacted, that notwithstanding anything to the contrary contained in any Act of parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway; and such gates shall be of such dimensions and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed: Provided always, that it shall be lawful for the lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road; and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed, in the manner directed by the lords of the said committee.

The provisions of this section as to the making gates at level crossings do not apply to a private railway not constructed under parliamentary powers, or for the conveyance of passengers (*Matson v. Baird*, 26 W. R. 835; 3 App. C. 1082).

The section imposes an obligation upon the company to keep the gates closed against cattle, whether straying or passing (*Fawcett v. York & N. Midland Ry. Co.*, 16 Q. B. 610; *Dickenson v. L. & N. W. Ry. Co.*, H. & R. 399).

10. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways; be it enacted, that all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue

5 & 6 Vict.
c. 55, s. 10.

be kept closed
across the
road.

2 & 3 Vict.
c. 45.

[The obligation is enforced by 8 Vict. c. 20, s. 47. By 26 & 27 Vict. c. 92, s. 7, Board of Trade may require a bridge.]

Proviso.

Railway
companies
to erect and
maintain
fences.

[See 8 Vict.
c. 20, ss. 65,
68.]

**5 & 6 Vict.
c. 55,
ss. 11, 12.**

of the provisions to that effect in the Acts of parliament relating to such railways respectively.

It has been said in Scotland, that the words "the public" mean the public travelling on the railway (*Monklands Ry. Co. v. Waddell*, 21 June, 1861, 23 Sc. Sess. Ca. (2nd series), 1167).

Sections 68 and 69 of the Railway Clauses Consolidation Act, 1845 (8 Vict. c. 29), have been said to be in substitution for this section (per Jervis, C. J. in *M. S. & L. Ry. Co. v. Wallis*, 23 L. J. C. P. 87).

Disputes
between
connecting
railways to
be decided by
the Board of
Trade.

11. And be it enacted, that where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the lords of the said committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either of the parties respectively; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the lords of the said committee pursuant to this provision, such company shall forfeit to her majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every such penalty may be recovered in any of her majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland.

Powers of
making
branch com-
munication
with rail-
ways, and of
entering upon
them with
locomotive
engines, to
be regulated
by the Board
of Trade.

12. And whereas powers of laying down branch lines opening into the ledges or flanches of main lines of railway and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various Acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent: And whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway; be it therefore enacted, that if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the lords of the said committee shall direct: Provided always, that no railway shall be considered a passenger railway if two thirds or more of the gross annual revenue of such railway shall be derived

Defining a
passenger-
railway.

from the carriage thereon of coals, ironstone, or other metals or minerals.

5 & 6 Vict.
c. 55,
ss. 13, 14.

13. And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do : And whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid ; be it therefore enacted, that in all cases where any railway company shall be willing, at their own expense, to carry any turnpike road, highway, or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the lords of the said committee shall direct.

Alteration of dangerous level crossings.

[By 26 & 27 Vict. c. 92, s. 7, Board of Trade may require a bridge instead of a level crossing.]

14. And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose ; be it therefore enacted, that it shall be lawful for the lords of the said committee to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose : Provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the lords of the said committee ; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the lords of the said committee shall, after considering the said report, certify that their

Power for railway companies to enter upon adjoining lands to repair accidents.

5 & 6 Vict.
c. 55, s. 15.

exercise is not necessary for the public safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the Acts relating to the railway on which such works may become necessary: Provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the lords of the said committee as hereinafter described.

Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety by the Board of Trade.

15. And whereas by various Acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said Acts: And whereas it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described; be it therefore enacted, that, in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the Act or Acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: Provided always, that any railway company applying to the lords of the said committee for any such certificate shall give fourteen days notice in writing, in the manner prescribed by the Act or Acts of such company for serving notices on land owners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the land required; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given: Provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

16. And whereas by various Acts relating to railways it is enacted, that no carriage or waggon shall carry or bear at any one time upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated; be it therefore enacted, that every provision contained in any such Act or Acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons shall be and the same is hereby repealed, and that, notwithstanding anything in any Act contained, it shall be lawful for any railway company to use and to permit to be used upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any Act or Acts of parliament already or hereafter to be passed in that behalf.

5 & 6 Vict.
c. 55,
ss. 16, 17.

Carriages of
greater
weight than
four tons may
be used on
railways.

17. And whereas by the said recited Act for regulating railways provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision; be it enacted, that it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by the said (*sic*) or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this Act; and every such person so offending, and every person counselling, aiding, or assisting therein, as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like

Punishment
of persons
employed on
railways
guilty of
misconduct.

[The recited
Act is 3 & 4
Vict. c. 97,
see ss. 13, 14.]

5 & 6 Vict.
c. 55,
ss. 18—23.

discretion of such justice, shall for every such offence forfeit to her majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour, as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

Sheriffs to
have juris-
diction in
Scotland.

18. And be it enacted, that in all cases in which by the present or the said recited Act for regulating railways it is provided that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this Act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said Acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

[19 is repealed by 31 & 32 Vict. c. 119, s. 47.]

[20 is recited in and amended by 7 & 8 Vict. c. 85, s. 12, and repealed except as to Ireland by the Cheap Trains Act, 1883, 46 & 47 Vict. c. 34.]

Meaning of
the words
"railway"
and "com-
pany."

21. And be it enacted, that whenever the word "railway" is used in this or in the said recited Act it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word "company" is used in this or in the said recited Act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless in either of the above cases the subject or context be repugnant to such construction.

Application
of penalties.

22. And be it enacted, that all penalties under this Act, for the application of which no special provision is made, shall be recovered in the name and for the use of her majesty, in the manner provided by the said recited Act for regulating railways.

Act may be
repealed this
session.

23. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of parliament.

A.

DOCUMENTS TO BE SENT TO THE RAILWAY DEPARTMENT, BOARD OF TRADE, PREVIOUSLY TO THE SECOND NOTICE OF THE INTENTION TO OPEN A RAILWAY BEING GIVEN.

- I. A copy of the parliamentary plan and section, with any deviations which may have been made during construction marked thereon in red; and with the corrections in the distances, levels, inclinations, sections of ground, and radii of curves, rendered necessary by such deviations, also marked in red; as well as the *positions of the several stations, and the lengths and heights of the platforms*; and the widths of cuttings and embankments on each side of the railway.
- II. A table of gradients and level portions, with the positions of the stations distinctly shown.
- III. A table of curves and straight portions.
- IV. A table of cuttings and embankments.
- V. A table of the bridges for roads and railways crossed by the railway.
- VI. A table of the bridges and viaducts over water-courses and valleys.
- VII. A table of all level crossings, public, occupation, private and bridle roads, or footways.
- VIII. A table of tunnels.
- IX. A table of aqueducts and of culverts 3 feet or more in diameter.
- X. A statement affording detailed information under the following heads:—

According to the forms forwarded herewith, observing that the situations of works, &c. should be described in each by reference to the same fixed point; and that it will be convenient if the station nearest to the metropolis, for a main line, or the junction with the main line for a branch railway, be adopted as such point of reference.

- 1st. *Permanent Way*.—Whether the line be double throughout, or partly double and partly single, or single throughout with sidings; the distances from the fixed point adopted in the tables, at which the single portions commence and terminate—or, for a single line, at which the sidings commence and terminate; whether the land has been purchased for an additional line of rails, or whether any other arrangements have been made with a view to adding an additional line at a future period; the width of the line at formation

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level; the gauge; the width between the lines where double; the description of rails employed, with a diagram section, their length, and weight per yard; the description and weight of the chairs, where these are employed; the mode of fixing the chairs and securing the rails; the fastenings adopted for the joints of the rails; the description of sleepers, with their smallest and average scantling and length; their distances from centre to centre if transverse; and if longitudinal the details of any ties by which they are connected; the nature of the ballast, and its depth below the under surface of the sleepers; the description of points adopted; the number and positions of all facing points connected with the main line; and the names of the stations or other places at which engine-turntables are provided.

2nd. *Fences*.—Description of fencing adopted on each portion of the line, especially the height of the rails, and distance between posts, if post and rail; the height, number of wires, distance between supports, and means of straining, in the case of wire fencing.

3rd. *Drainage*.—General description of the drainage employed; and if, on any part of the line, it has been attended with peculiar difficulty, a detailed description should be given.

4th. *Stations*.—Their names, and their distances, at the commencement and termination, respectively, from the fixed point; the gradients on which they are situated and approached; the length of the platforms and their height above the level of the rails; and the positions of and distances between the home and the distant-signals.

5th. *Width of Line*.—The minimum space allowed from a height of 2 feet 6 inches above the rails, between the sides of the widest carriages in use upon the railway and any fixed works, such as pillars and walls at stations, abutments, piers, supports, arches, girders, telegraph posts, sheds, &c., along the line. The minimum section of each tunnel should be appended, showing within it a section of the widest carriage to be used on the line.

6th. *Bridges and Viaducts*.—Drawings in detail of all bridges and viaducts, either over or under the railway, accompanied by sufficient information to allow of the probable strength of each being ascertained by calculation; and by sections showing the distances between the girders and the sides of the widest carriages to be used on the line, when the girders are more than 2 feet 6 inches above the level of the rails.

7th. Diagrams of all junction and station arrangements.

XI. *Carriages to be used for the Conveyance of Cheap Train Passengers*.—The following *minimum* dimensions should be observed in the construction of these carriages:—They should contain 20 cubic feet of space per passenger; the area of the glass windows should afford 60 superficial inches per passenger; they should be provided with proper means of ventilation, and with at least one

lamp to each compartment of each carriage; the seats should be provided with backs, should be 15 inches broad, and should afford 18 inches in width per passenger. Drawings of these carriages, to a scale of not less than 4 feet to an inch, should be supplied, viz.:—

1. An outside elevation, showing the positions of the windows, ventilators, and lamps.

2. A transverse section.

3. An inside plan, showing the arrangements of the several seats, with references by letters, specifying the width and length of each seat, and the number of passengers to be accommodated on each; also a memorandum of the size of the windows and ventilators, stating whether they are fixed or constructed to open and close, and the positions of the lamps for lighting the carriages at night.

B.

MEMORANDUM OF IMPORTANT REQUIREMENTS.

1. The requisite apparatus should be provided at the period of inspection for ensuring an adequate interval of space between following trains.

2. Home-signals and distant-signals for each direction should be supplied at stations and junctions; with extra signals for such sidings as are used either for the arrival or for the departure of trains.

3. The levers by which points and signals are worked should be brought close together, into the position most convenient for the person working them, and should be interlocked. The points should be provided with double connecting rods. Point levers should be sufficiently long to enable the pointsmen to work them without risk or inconvenience, and should not be placed on the ground between the lines of rails. Any signal which is worked by a wire or rod should be so weighted as to fly to or remain at "danger" on the fracture of the wire or rod.

4. The levers by which points and signals are worked should, as a rule, be brought together under cover upon a properly constructed stage, with glass sides inclosing the apparatus. They should be so arranged that while the signals are at danger the points shall be free to move; that a signalman shall be unable to lower a signal for the approach of a train, until after he has set the points in the proper direction for it to pass; that it shall not be possible for him to exhibit at the same moment any two signals that can lead to a collision between two trains; and that, after having lowered his signals to allow a train to pass, he shall not be able to move his points so as to cause an accident, or to admit of a collision between any two trains. The facing points should be provided with apparatus which will ensure the points being in their proper positions before the signals are lowered, and which will prevent the signalman from shifting the points whilst a train is passing them, and,

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as an additional precaution, means should generally be provided for detecting any failure in the connections between the signal cabins and the points. Every signalman should be able to see the arms and the lights of the home as well as of the distant signals, and the working of the points or of the indicators showing their position, the back lights of the lamps being made as small as possible having regard to efficiency. When the front lights are visible to the signalman in his cabin no back lights should be provided. The fixed lights in the signal-cabins should be screened off, so as not to be mistakeable during fogs for the signals exhibited to control the running of trains. If, from any unavoidable cause, the arm or light of any signal cannot be seen by the signalman, a repeater should be provided in the cabin. Clocks should be placed in conspicuous positions for the use of the signalmen.

5. Facing points should be avoided as far as possible, but when used they should be secured by facing point locks and locking bars; the length of the locking bars should exceed the greatest distance between the adjacent wheels of passengers' carriages, and the stock rails should be tied to gauge with iron or steel ties. When facing points cannot be dispensed with, they should be placed as near as possible to the levers by which they are worked or bolted, and in no instance at a greater distance than 180 yards from those levers. All points, whether facing or trailing, should be worked or bolted by rods and not by wires.

6. It being necessary that a uniform system of signals should be adopted on all railways, the semaphore arms should, at junctions, be on separate posts or on brackets; and at stations, when there is more than one arm on one side of a post, they should be made to apply—the first or upper arm to the line on the left, the second arm to the line next in order from the left, and so on; but in cases where the main or more important line is not the one on the left, separate signal posts should be provided, or the arms should be on brackets. The distant-signals should be distinguished by notches cut out of the ends of the semaphore arms where such are employed. In no case should a distant-signal arm be placed above a home-signal arm on the same post for trains going in the same direction. In the case of sidings, a low and short arm, distinct from the arm or arms for the passenger lines, may be employed.

7. The junctions between passenger lines and goods and mineral lines and sidings should be protected by home and distant-signals. The sidings should be so arranged, that the shunting carried on at them shall present the least possible obstruction to the passenger lines. There should be safety points upon each goods and mineral line and siding, with the points closed against the passenger lines and interlocked with the signals. In the case of sidings joining single lines on favourable gradients, where the train staff and ticket system is in use for working the traffic, a key attached to the staff may be used for opening the sidings, and signals may be dispensed with.

8. When a junction is situated near to a passenger station, or is connected with goods or mineral sidings, the platforms and sidings

should be so arranged as to prevent, as far as possible, any necessity for shunting over the junction.

9. The junctions of all railways should, in ordinary cases, be formed as double-line junctions.

10. The lines of railway leading to the passenger platforms should be so arranged that the engines, as they arrive at and depart from a station, shall always be in front of the passenger trains; and that, in the case of double lines or of passing places on single lines, each line shall have its own platform.

11. Platforms should be continuous, and not less than 6 feet wide for stations of small traffic, nor less than 12 feet wide for important stations; the descent at the ends of the platforms should be by ramps, and not by steps. Pillars or columns, for the support of roofs or other fixed works, should not be nearer to the edge of the platform than 6 feet. It is considered desirable that the height of the platforms above the rails should not be less than 2 feet 6 inches. The lines should be laid down so as to leave as little space as possible between the edges of the platforms and those of the continuous footboards on the carriages. Shelter should be provided on every platform, and conveniences where necessary.

Foot-bridges over or subways under the line should be provided for passengers to cross the railway at all stations of any importance.

12. When stations occur on or near a viaduct or bridge under the railway, a parapet or fence on each side should be provided, sufficient to prevent passengers falling from the viaduct or bridge in the dark. Viaducts under the railway should be provided with handrails and with projecting platforms for the protection and escape of the plate-layers. Viaducts of timber and iron should be provided with man-holes and other facilities for inspection.

13. The steps of staircases approaching stations, and of foot-bridges over the lines, and of foot-subways, should not be less than 11 inches in the tread, nor more than 7 inches in the rise, and all such staircases should be provided with efficient handrails.

14. Clocks should be provided at all stations in positions visible from the line.

15. Turntables for the engines, of sufficient diameter to enable the longest engines and tenders in use on the line to be turned without being uncoupled, should be erected at terminal stations, and at junctions and other places at which the engines require to be turned, except in cases of short lines not exceeding 15 miles in length, where the stations are not at a greater distance than 3 miles apart, and the railway company is willing to give an undertaking to stop all trains at all stations. Care should be taken to keep all turntables at safe distances from the adjacent lines of rails, so that engines, waggons, or carriages, when being turned, may not foul other lines, or endanger the traffic upon them.

16. No station should be constructed, and no siding should join a passenger line, on a steeper gradient than 1 in 260, except where it is unavoidable. When the line is double, and the gradient at a station or siding-junction is necessarily steeper, and when danger

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is to be apprehended from vehicles running back, a catch-siding, with points weighted for the siding, should be provided further down the incline than the passenger platform, siding-junction, or goods-yard, to intercept runaway vehicles. Under similar circumstances, when the line is single, in the case, 1st, of a station, a second line should be laid down, a second platform should be constructed, and a catch-siding similarly provided; and in the case, 2nd, of a siding-junction, means should be provided for placing the whole train in sidings, clear of the main-line before any shunting operations are commenced.

17. Cast-iron must not be used for railway under-bridges, except in the form of arched ribbed-girders, where the material is in compression.

In a cast-iron arched bridge, or in the cast-iron girders of an over-bridge, the breaking weight of the girders should be not less than three times the permanent load due to the weight of the super-structure, added to six times the greatest moving load that can be brought upon it.

In a wrought-iron or steel bridge the greatest load which can be brought upon it, added to the weight of the super-structure, should not produce a greater strain on any part of the material than five tons, where wrought-iron is used, or six tons and a half, where steel is employed, per square inch.

The engineer responsible for any steel structure should forward to the Board of Trade a certificate to the effect that the steel employed is either cast steel, or steel made by some process of fusion subsequently rolled or hammered, and of a quality possessing considerable toughness and ductility, together with a statement of all the tests to which it has been subjected.

18. The heaviest engines, boiler trucks, or travelling cranes in use on railways afford a measure of the greatest moving loads to which a bridge can be subjected. These rules apply equally to the main and the transverse girders.

19. It is desirable that viaducts should, as far as possible, be wholly constructed of brick or stone, and in all such cases they should have parapet walls on each side, not under 4 feet 6 inches in height above the level of the rails, and not less than 18 inches thick.

Where it is not practicable to construct the viaducts of brick or stone, and iron or steel girders are made use of, it is considered best that in important viaducts the permanent way should be laid between the main girders. If, however, in such viaducts the main girders are placed below the level of the rails, substantial parapets not under 4 feet 6 inches in height must be provided. In important viaducts, substantial guards should be fixed outside, above the level of and as close to the rails as possible, but not so as to interfere with the steps or any of the working parts of the engine or trains.

Where iron is made use of for the construction of the abutments or piers which are intended to support or carry the iron girders of high bridges and viaducts, it must be distinctly understood that

these abutments or piers should not consist of cast-iron columns of small size, such as 12, 15, or 18 inches in diameter.

In all large structures of this kind the stability of the work must be such as will provide for a wind pressure of 56 lbs. on the square foot.

20. All castings for use in railway structures should, where practicable, be cast in a similar position to that which they are intended to occupy when fixed.

21. The upper surfaces of the wooden platforms of bridges and viaducts should be protected from fire.

22. The joints of the rails should be secured by means of fish-plates, or by some other equally secure fastening. The weight of the cast-iron chairs on branch lines, or lines on which the traffic will be small and light, and where it will be worked by engines of ordinary construction, should not be less than 26 lbs. each; but on main lines, and where heavy traffic may be worked at high speeds, the chairs should weigh not less than 35 lbs.

23. When chairs are used to support the rails they should be secured to the sleepers, at least partially, by iron spikes or bolts. With flat-bottomed rails, when there are no chairs, or with bridge rails, fang or other through-bolts should be used, at least at the joints and at some intermediate places.

24. No standing work (other than a passenger platform) should be nearer to the side of the widest carriage in use on the line than 2 feet 4 inches, at any point between the level of 2 feet 6 inches above the rails and the level of the upper parts of the highest carriage doors. This applies to all arches, abutments, piers, supports, girders, tunnels, bridges, roofs, walls, posts, tanks, signals, fences, and other works, and to all projections at the side of a railway constructed to any gauge.

25. The intervals between adjacent lines of rails, or between lines of rails and sidings, should not be less than 6 feet.

26. At all level crossings of public roads the gates should be so constructed as to close across the railway, as well as across the road, at each side of the crossing, and a lodge or station house should be provided, as is required by Act of Parliament. The gates should not be capable of being opened at the same time for the road and the railway, and all sidings and connections should be placed so that the shunting can be done without interfering with the level crossing. When a level crossing occurs at a station, there should be a box, if there is not a lodge, at the gates, for the use of the gate-keeper, unless the gates are worked from a signal cabin. Wooden gates are considered preferable to iron gates for closing across the railway.

27. Where public roads are crossed on the level, signals in one or both directions, interlocked with the gates, and a foot-bridge over or a subway under the line, may be required. At public foot-path level crossings a foot-bridge over or a subway under the line may be required.

28. Mile-posts and quarter and half-mile posts and gradient-boards should be provided along the line.

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29. Tunnels and long viaducts should in all cases be constructed with recesses for the escape of the plate-layers.

30. In all curves where the radius is 10 chains or less, a check-rail should be placed inside the inner rail of the curve.

C.

MODES OF WORKING SINGLE LINES.

In the case of a line being single, a certificate, under the seal, and signed by the chairman and secretary of the company, should be sent to the Board of Trade, through the inspecting officer, to the effect that one of the two following modes of working single lines will be adopted, namely:—

- I. That only one engine in steam, or two or more engines coupled together, shall be allowed to be upon the single line at one and the same time.
- II. That the line shall be worked by *train-staff*, in the mode described in the following amended regulations, combined with the absolute block-telegraph system:—

Rules for Working the Single Line between A., B., C., &c.

1. Either a train-staff or a train-ticket is to be carried with each engine or train to and fro, and for this purpose

	Colour of Staff and Ticket.	Form of Staff and Ticket.
[One, two, or more] train-staffs and sets of train-tickets will be employed, viz. :—		
One between A. and B.	Red.	Square.
One between B. and C.	Blue.	Round.
&c. &c.	&c.	&c.

2. No engine or train is to be permitted to leave or pass either of the staff-stations, A., B., or C., unless the staff for the portion of line over which it is to travel is then at the station; and no engineman is on any account to leave or pass a staff-station without seeing such train-staff.

3. If no second engine or train is intended to follow, the staff is to be given to the engineman or guard.

4. If other engines or trains are intended to follow before the staff can be returned a train-ticket, stating "staff following," is to be given to the engineman of the leading engine, or the engineman or guard of the leading train, and so on with any other except the last, the staff itself being sent with the last. After the staff has been sent away, no other engine or train is to leave the staff-station under any circumstances whatever until its return.

5. The train-tickets are to be kept in a box fastened by an inside spring, and the key to open the box is the train-staff, so that a

ticket cannot be obtained without the train-staff. The train-staff is to lock the box in being taken out of it.

6. The train-staffs, the train-tickets, and the ticket-boxes are to be painted or printed in different colours, red for the line between A. and B.; blue for that between B. and C., &c.; the inside springs and the keys on the staffs being so arranged that the red staff cannot open the blue box, nor the blue staff the red box, and so forth. This is to prevent mistakes.

7. The ticket-boxes are to be fixed by brackets in the booking-offices at the staff-stations, the brackets being turned up at the ends to receive the train-staffs when they are at the stations.

8. The station master, the clerk in charge, the inspector, or the person in charge for the time at a staff-station, is the sole person authorized to receive, exhibit, or deliver the staff or ticket.

9. The usual special train tail-signal, "engine following," is to be used when a ticket is given, for the guidance of the platelayers and gatekeepers upon the line.

10. When a ballast train has to work on the line, the staff is to be given to the engineman or guard in charge of it. This will close the line whilst the ballast train is at work. The ballast train must proceed afterwards to one of the staff stations to open the line before the ordinary traffic can be resumed.

11. In the event of an engine or train breaking down between two staff-stations, the fireman is to take the train-staff to the staff station in the direction whence assistance may be expected, that the staff may be at that station on the arrival of an engine. Should the engine or train that fails be in possession of a train-ticket instead of the staff, assistance can only come from the station at which the train-staff has been left. The fireman will accompany any assisting engine to the place where he left his own engine.

N.B.—The train-staff may either be fixed in a socket on the engine or tender or carried over the shoulder by means of a cross-belt.

D.

PRECAUTIONS RECOMMENDED IN THE WORKING OF RAILWAYS.

1. There should be a break-vehicle with a guard in it at the tail of every train; this vehicle should be provided with a raised roof and extended sides, glazed to the front and back; and it should be the duty of the guard to keep a constant look-out from it along his train.

2. All passenger carriages should be provided with continuous footboards extending throughout the whole length of each carriage and as far as the outer ends of the buffer castings. As passenger carriages now pass from one company's line to another's, it is essential for the public safety that although the widths of the

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carriages on the different lines differ from each other, the widths across the carriages from the outside of the continuous footboard on one side to the outside of the continuous footboard on the opposite side should be identical for the carriages of all railway companies, so that the lines of rails may be laid at the proper distance from the edges of the passenger platforms.

3. There should be means of intercommunication between a guard at the tail of every passenger train and the engine driver, and between the passengers and the servants of the company, as required by the Legislature.

4. Continuous breaks under the control of the engine driver and each guard should be employed with all passenger trains. In the opinion of the Board of Trade, which has been fully expressed in recent correspondence, due security will not have been taken for the public safety until some system or systems of continuous breaks has or have been universally adopted, instantaneous in action, capable of being applied by engine driver or guard, and automatic in case of accident.

5. The tyres of all wheels should be so secured to the rims of the wheels as to prevent them from flying open when they are fractured.

6. The engines employed with passenger trains should be of a steady description, with not less than six wheels, with a long wheel-base, with the centre of gravity in front of the driving wheels, and with the motions balanced. They should not be run tender or tank first.

7. Records should be carefully kept of the work performed by the wearing parts of the rolling stock, to afford practical information in regard to them, and to prevent them from being retained in use longer than is desirable.

8. All lines should be worked on the block telegraph system. In case of junctions the block system should be employed for preventing trains, which can come into collision through over-running signals, from approaching a junction simultaneously. The signal cabins should be commodious, and should be supplied with clocks, with record books, with a separate needle for signalling the trains on each line of rails, and with an extra needle or telephone for other necessary communications between the signalmen. The point levers, signal levers, and block instruments should be so placed in the cabins that signalmen when working them should have the best possible view of the railway.

9. When drovers or other persons are permitted to travel with goods or cattle trains, suitable vehicles should be provided for their accommodation near the front of such trains.

10. Luggage should not be carried on the roofs of railway carriages.

11. The names of the stations should be marked on the lamps, besides being shown on other conspicuous places.

BOARD OF TRADE (Railway Department),
December, 1885.

HENRY G. CALCRAFT.

DUTIES ON PASSENGERS.

5 & 6 VICT. c. 79.

An Act to repeal the duties payable on stage carriages and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other duties in lieu thereof; and also to amend the Laws relating to the Stamp Duties (so far as it relates to Railways). 5 & 6 Vict.
c. 79,
ss. 1, 2.

[5th August, 1842.]

WHEREAS by an Act passed in the second and third years of the reign of his late majesty king William the Fourth, intituled "An Act to repeal the duties under the management of the commissioners of stamps, on stage carriages, and on horses let for hire in Great Britain, and to grant other duties in lieu thereof; and also to consolidate and amend the laws relating thereto," certain duties contained in the Schedule (A.) to the last-mentioned Act annexed were granted for and in respect of all passengers conveyed for hire along any railway in Great Britain in or upon carriages drawn or impelled by the power of steam or otherwise: . . . and it is expedient that all the said duties should be repealed, and others granted in lieu thereof; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this Act the aforesaid duties granted and imposed by the said Act passed in the second and third years of the reign of his late majesty king William the Fourth for and in respect of passengers conveyed for hire along any railway in Great Britain shall severally cease and determine, and the same shall be and are hereby repealed, save and except such of the said respective duties, or so much and such part or parts thereof respectively as shall have become due or payable or have been incurred before or upon the day appointed for the commencement of this Act with regard to such duties respectively, all which said duties or parts of duties so due or incurred, or remaining to be paid as aforesaid, shall be recoverable by the same ways and means, and with and under the same penalties, and in the same manner, in all respects, as if this Act had not been made.

2 & 3 Wm. 4,
c. 120.

Duties
repealed:—

Railway
passengers.

2. And be it enacted, that in lieu of the duties by this Act repealed there shall be raised, levied, collected, and paid, unto and

New duties
to be levied,
as set forth in
the schedule.

5 & 6 Vict.
c. 79, s. 4.

[By 7 & 8
Vict. c. 85,
s. 9, pas-
sengers by
cheap trains
are exempt
from tax.]

for the use of her majesty, her heirs and successors, in and throughout Great Britain for and in respect of the passengers conveyed upon any railway the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the schedule to this Act; and that the said schedule shall be deemed and taken to be a part of this Act.

Where the company, in addition to the sum charged for fare, required from passengers a further sum of 5 per cent. to cover the duty imposed by this Act, it was held that they were bound to pay duty upon the additional 5 per cent. (*A.-G. v. L. & N. W. Ry. Co.*, 5 Ex. D. 247; 6 Q. B. D. 216).

In the same case it was held that duty was payable upon additional charges, made for accommodation in sleeping carriages.

Accounts to
be kept of
money re-
ceived for the
conveyance of
passengers on
railways;

[Now the
Board of
Inland
Revenue,
12 & 13 Vict.
c. 1.]

and of money
paid by the
persons carry-
ing such pas-
sengers to the
proprietors of
railways, on
account of
fares received
or for the use
of the railway.

[Provisions as
to delivering
account re-
pealed by
Statute Law
Revision Act,
1874 (No. 2),
37 & 38 Vict.
c. 96, and by
26 & 27 Vict.
c. 33, s. 13,
the accounts
are to be
made up at
the close of
each calendar

4. And be it enacted, that the proprietor or company of proprietors of every railway in Great Britain, and every other person who shall carry or convey, or cause to be carried or conveyed, any passenger for hire in or upon any railway in Great Britain, shall, from time to time and at all times, keep and enter or cause to be entered in a book or books to be kept for that purpose, in such manner and form as the commissioners of stamps and taxes shall direct or approve, a just and true account of all and every sum and sums of money which shall be received or charged daily by or for such proprietor or company or other person for the hire, fare, or conveyance of all such passengers as aforesaid, whether the same shall be received for the conveyance of passengers on the railway of such proprietor or company or other person only, or on such last-mentioned railway, and any other railway, or on any such other railway only, and for or in respect of all which sums of money the duties charged by this Act shall, in manner herein-after directed, be paid by the said proprietor or company or other person so receiving or charging the same as aforesaid, without any deduction or abatement thereout on any account or pretence whatever; and the proprietor or company of proprietors of any railway so receiving or charging any such sums of money as aforesaid shall also in like manner keep and enter or cause to be entered an account of all sums of money paid or accounted for, or to be paid or accounted for, by such proprietor or company to the proprietor or company of proprietors of any other railway (specifying the same) upon which any of such passengers shall be carried or conveyed, as his or their share or proportion of any of such sums of money so received or charged as aforesaid, or as or for or in the nature of toll or otherwise for the use of such last-mentioned railway, in the conveyance of such passengers; and the proprietor or company of proprietors of every such last-mentioned railway shall in like manner keep and enter or cause to be entered an account of all sums of money so paid or accounted for to him or them as last aforesaid, and for or in respect of which the duties shall or ought to have been paid as aforesaid by such first-mentioned proprietor or company; . . . and to and with every such account there shall be annexed and delivered an affidavit (to be taken before any one of her majesty's justices of the peace) of such proprietor or other

person as aforesaid, or of the secretary, chief clerk, or accountant of such proprietor or company or other person, stating that the deponent is well acquainted with the books and accounts of the said proprietor, company, or other person, and that he has examined and checked the same, and also the account to which such affidavit is annexed, and that to the best of his knowledge, information, and belief such last-mentioned account doth contain and is a true and faithful account of all and every sum and sums of money received or charged by or for such proprietor or company or other person aforesaid for the hire, fare, or conveyance of passengers on any railway during the period comprised in such account, and of all other matters and things required by this Act to be contained in such account; and such proprietor or company or other person shall, at the time of delivering every such account, pay or cause to be paid to the receiver-general of stamps and taxes, or to the officer authorized by the said commissioners to receive the same, for the use of her majesty, the duties chargeable under this Act for or in respect of all and every the sum and sums of money so received or charged as aforesaid, and contained or which ought to be contained in such account.

Under this section, the company actually receiving the money are to keep the account and pay the duty though they may receive it merely as agents for another company (*G. W. Ry. Co. v. A.-G.*, L. R. 1 H. L. 1).

5. Provided always, and be it enacted, that it shall be lawful (where there shall be no express contract or agreement between the parties to the contrary) for any such proprietor or company to deduct from and retain out of the monies to be paid over to any such other proprietor or company as aforesaid, the amount of the duties by this Act chargeable thereon, and which such proprietor or company receiving such monies shall have paid or be liable to pay.

5 & 6 Vict.
c. 79,
ss. 5, 6.

month.
And by
46 & 47 Vict.
c. 34, s. 7, a
certificate is
substituted
for the affi-
davit.]

Proprietors of
railways to
deduct the
duty on the
sums to be
paid over to
other pro-
prietors.

6. And be it enacted, that all and every the book and books of every such proprietor or company or other person, in which any account relating to such passengers, or to the money received or charged for the hire, fare, or conveyance of the same, or to any money received from or paid or accounted for to any other proprietor or company for such hire, fare, or conveyance as aforesaid, or a proportion thereof, or as or for such toll as aforesaid, shall be entered or kept, shall be open for the inspection and examination at all seasonable times of any officer or officers of stamp duties authorized by the commissioners of stamps and taxes in that behalf; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid; and if any such proprietor or other person, or the secretary or accountant, or any clerk or officer of any such proprietor or company or person, having or keeping the custody or possession of any such book, or having power to produce the same, shall, upon demand made by any such officer, and upon producing and showing his authority, refuse to permit such officer of stamp duties to inspect and examine

Books con-
taining any
such accounts
to be open to
inspection
of officers of
stamps.

[Now the
Board of
Inland
Revenue,
12 & 13 Vict.
c. 1.]

Penalty for
refusing to
permit
inspection.

5 & 6 Vict.
c. 79, s. 7.

such book, or to take copies thereof or extracts therefrom or of or from any account entered or contained therein, or shall refuse to produce such book to such officer of stamp duties for his inspection and examination, every such person so offending shall for every such offence forfeit the sum of fifty pounds.

Railway pro-
prietors to
give bond
for securing
the duties.

[The Com-
missioners of
Inland

Revenue may
dispense with
the bond,
46 & 47 Vict.
c. 34, s. 7.]

7. And be it enacted, that the proprietor or company of proprietors of every such railway, and every other person, before any passengers shall be conveyed or caused to be conveyed by him or them on any railway as aforesaid, shall give security, by bond, to her majesty, her heirs and successors, with a condition that such proprietor or company, or other person as aforesaid, shall from time to time enter and keep, and cause to be kept and rendered, in the manner directed by this Act, the accounts by this Act required to be kept and rendered by such proprietor and company and persons respectively, containing and setting forth justly, truly, and faithfully all the several matters and things by this Act required to be contained and set forth therein; and that such proprietor or company or person, and his or their secretary, accountant, and clerk, and every other person under or subject to his or their order, direction, or control, having the custody or possession of any books or book of such proprietor or company or other person as aforesaid, in which any account relating to any passengers conveyed upon any railway, or the money received, charged, accounted for, or paid for the hire, fare, or conveyance of the same, shall be contained or entered, shall from time to time, upon every reasonable request of any officer of stamp duties authorized as aforesaid, produce and show to such officer, and permit him to inspect and examine the same, and to take copies thereof or extracts therefrom, and of and from any account entered or contained therein; and that such proprietor or company or other person aforesaid shall and will well and truly pay or cause to be paid, for the use of her majesty, her heirs and successors, at the times and in manner directed by this Act, all and every the duties which shall from time to time become chargeable under this Act, and payable by him or them upon or for or in respect of the passengers, or the hire or fare or conveyance of the passengers, which shall be so conveyed as aforesaid along any railway; and that such proprietor or company, or other person aforesaid, shall well and truly do and perform, and cause to be done and performed, all such acts, matters, and things as by this Act are required or directed to be done or performed by or on the part or behalf of such proprietors or company or other person; and every such bond shall be taken with sufficient sureties to the satisfaction of the commissioners of stamps and taxes, and in such sum as the said commissioners may judge to be reasonable and proper; and every such security shall be renewed from time to time, whenever and so often as such bond shall be forfeited, or as the parties to the same or any of them shall die, or become bankrupt or insolvent, or reside in parts beyond the seas, and also whenever and so often as the said commissioners shall in their discretion require the same to be

renewed; and if any proprietor or company of proprietors of any such railway, or other person as aforesaid, shall convey or cause to be conveyed upon any railway any passengers for hire, without having first given such security by bond to her majesty, in manner hereinbefore directed, or if any proprietor or company of proprietors of any railway shall permit or suffer any passengers to be conveyed for hire upon such last-mentioned railway, by any other person or company, before such other person or company shall have given security as aforesaid, and before a certificate, signed by the proper officer of stamp duties in that behalf (which certificate such officer is hereby authorized and required to give), that such security hath been given, shall have been issued, or after notice in writing, signed by any authorized officer of stamp duties, and delivered to the secretary or chief clerk of the proprietor or company of proprietors of such railway, or left at the office of such railway with any clerk or officer there, that any such security ought, in pursuance of this Act, to be renewed, or is required to be renewed, and before a certificate, signed as aforesaid, that the same has been renewed, shall have been issued; or if any such proprietor or company of proprietors, or other person, shall refuse or neglect to renew such security, whenever and so often as the same is or shall by or in pursuance of this Act be required to be renewed, such proprietor or company or person shall forfeit the sum of one hundred pounds, and the further sum of one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, or for every day on which any such passengers shall be permitted to be conveyed before such security shall be given or renewed, and a certificate thereof issued as aforesaid, according to the true intent and meaning of this Act.

5 & 6 Vict.
c. 79, s. 24.

24. And be it enacted, that all pecuniary penalties imposed by or which may be incurred under this Act may be sued or prosecuted for and recovered by the same ways and means, and in the same manner and form, and be mitigated and applied as any other penalty incurred under any Act relating to the stamp duties may be sued for, prosecuted, and recovered, mitigated and applied; and that all the powers, provisions, regulations, forfeitures, pains, and penalties contained in or imposed by any Act or Acts in force with relation to any of the duties under the management of the commissioners of stamps and taxes, so far as the same are or may be applicable in cases not by this Act expressly provided for, and so far as the same shall not be superseded by, and as the same shall be consistent with, the express provisions of this Act, shall be of full force and effect with respect to the duties by this Act granted, and to the matters and things charged or chargeable therewith, in respect of which duty is hereby granted, and shall be applied and put in execution for recovering, securing, and collecting the said duties hereby granted, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes

Penalties
imposed by
this Act
how to be
recovered.

Powers, pro-
visions, &c.,
of former
Acts to con-
tinue in
force.
[Board of
Inland
Revenue,
see marginal
note to
section 6.]

5 & 6 Vict.
c. 79,
ss. 26, 27.

as if such powers, provisions, regulations, forfeitures, pains and penalties had been repeated and specially enacted in this Act with reference to the duties by this Act granted and made payable.

Commence-
ment of Act.

26. And be it enacted, that this Act shall commence and take effect on the respective days hereinafter mentioned; (that is to say,) so much thereof as relates to the duties on passengers conveyed on railways shall commence and take effect on the first day of August in this present year one thousand eight hundred and forty-two; and so much thereof as relates to stage carriages, and licences for keeping, using, or employing the same, and to the duties thereon, shall commence and take effect on the third day of October in this present year one thousand eight hundred and forty-two; and so much as relates to any other duties, matters, and things shall commence and take effect on the passing of this Act.

Act may be
amended, &c.,
this session.

27. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of parliament.

SCHEDULE.

Containing the duties in respect of passengers conveyed for hire by carriages travelling upon railways; (that is to say,)

For and in respect of all passengers conveyed for hire upon or along any railway, a duty at and after the rate of 5% for 100% upon all sums received or charged for the hire, fare, or conveyance of all such passengers.

THE CHEAP TRAINS ACT, 1844.

7 & 8 VICT. c. 85.

An Act to attach certain conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament ; and for other purposes in relation to Railways.

7 & 8 Vict.
c. 85, s. 1.

[9th August, 1844.]

WHEREAS it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public; Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if at any time after the end of twenty-one years from and after the first day of January next after the passing of any Act of the present or of any future session of parliament for the construction of any new line of passenger railway, whether such new line be a trunk, branch, or junction line, and whether such new line be constructed by a new company incorporated for the purpose or by any existing company, the clear annual profits divisible upon the subscribed and paid-up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid-up capital stock, it shall be lawful for the lords commissioners of her majesty's treasury, subject to the provisions hereinafter contained, upon giving to the said company three calendar months' notice in writing of their intention so to do, to revise the scale of tolls, fares, and charges limited by the Act or Acts relating to the said railway, and to fix such new scale of tolls, fares, and charges, applicable to such different classes and kinds of passengers, goods, and other traffic on such railway, as in the judgment of the said lords commissioners, assuming the same quantities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred: Provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist as long as any such revised scale of tolls, fares, and charges shall be in force, that the said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock: Provided also, that such revised scale shall not be again revised or

If, after twenty-one years from the passing of the Act for the construction of any future railway, the profits shall exceed 10 $\frac{1}{2}$ per cent., the Treasury may revise the scale of tolls, and fix a new scale.

Proviso.

7 & 8 Vict.
c. 85,
ss. 2-4.

such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

Option of
purchase of
future rail-
ways.

2. And be it enacted, that whatever may be the rate of divisible profits on any such railway it shall be lawful for the said lords commissioners, if they shall think fit, subject to the provisions hereinafter contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway, with all its hereditaments, stock, and appurtenances, in the name and on behalf of her majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years' purchase of the said annual divisible profits, estimated on the average of the three then next preceding years: provided that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years' purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase-money shall be paid to the said company: provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares, and charges shall be in force.

Proviso.

Existing
railways not
to be sub-
jected to the
options.

3. Provided always, and be it enacted, that the option of revision or purchase shall not be applied to any railway made or authorized to be made by any Act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this Act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietors thereof shall require that the same be so included.

Reservation
to Parliament
of the con-
sideration of
future policy
in regard to
the said
options.

4. And whereas it is expedient that the policy of revision or purchase should in no manner be prejudged by the provisions of this Act, but should remain for the future consideration of the legislature, upon grounds of general and national policy: And whereas it is not the intention of this Act that under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies: be it enacted, that no such notice as hereinbefore mentioned, whether of revision or purchase, shall be given until provision shall have been made by parliament, by an Act or Acts to be passed in that behalf, for authorizing the guarantee or the levy of the purchase-money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them shall be exercised; and

that no Bill for giving powers to exercise the said options, or either of them, shall be received in either house of parliament unless it be recited in the preamble to such Bill that three months' notice of the intention to apply to parliament for such powers has been given by the said lords commissioners to the company or companies to be affected thereby.

7 & 8 Vict.
c. 85,
ss. 5, 6.

5. And be it enacted, that, from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received and paid on account of any railways within the provisions hereinbefore contained (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk, line, or other railways), by the directors of the company to whom such railway belongs or by whom the same may be worked; and every such railway company shall once in every half year during the said period of three years cause a half-yearly account in abstract to be prepared, showing the total receipt and expenditure on account of the said railway for the half year ending the thirtieth day of June and the thirty-first day of December respectively, or such other convenient days as shall in each case be directed by the said lords commissioners, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said lords commissioners on or before the last days of August and February respectively, or such other days as shall in each case be directed by the said lords commissioners, in each year; and it shall be lawful for the said lords commissioners, if and when they shall think fit, to appoint any proper person or persons to inspect the accounts and books of the said company during the said period of three years; and it shall be lawful for any person so authorized, at all reasonable times, upon producing his authority, to examine the books, accounts, vouchers, and other documents of the company at the principal office or place of business of the company, and to take copies or extracts therefrom.

Accounts to be kept, and to be open to inspection.

6. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather; be it enacted, that on and after the several days hereinafter specified all passenger railway companies which shall have been incorporated by any Act of the present session, or which shall be hereafter incorporated, or which by any Act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous Acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous

Companies to provide one cheap train each way daily.

[*Repealed, except as to Ireland, by the Cheap Trains Act, 1883 (46 & 47 Vict. c. 84).*]

7 & 8 Vict.
c. 85, s. 6.

[By 26 & 27
Vict. c. 33,
s. 14, "cheap
train" must
run six days
in the week,
or be a
market train.]

Acts, shall, by means of one train at the least to travel along their railway from one end to the other of each trunk, branch, or junction line belonging to or leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way on every week day, except Christmas Day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several Acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions; (that is to say,)

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the lords of the committee of privy council for trade and plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the lords of the said committee:

The fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled:

Each passenger by such train shall be allowed to take with him half a hundred weight of luggage, not being merchandize or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains:

Children under three years of age accompanying passengers by such train shall be taken without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger:

And with respect to all railways subject to these obligations which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the Act shall be passed by reason of which the company will become subject thereunto, which shall first happen.

For the meaning of the words "from one end to the other of each trunk," see *A.-G. v. N. London Ry. Co.*, L. R. 9 Ex. 330, p. 337.

The hour of starting must be approved by the Board of Trade, to constitute a train a cheap train within this section, although only the parliamentary fare is charged (*G. W. Ry. Co. v. A.-G.*, L. R. 1 H. L. 1).

Fractions of a
mile may be
charged for.

It having been decided that this section gives the company no power to charge for a fraction of a mile (*Rice v. Dublin & Wicklow Ry. Co.*, 8 Ir. C. L. 160), such power has been conferred by 21 & 22 Vict. c. 75.

Under this section husband and wife travelling together are each entitled to half a hundredweight of luggage (*G. N. Ry. Co. v. Shepherd*, 21 L. J. Ex. 114; 8 Ex. 30).

To constitute a train a cheap train within section 9, no third class passenger must be charged more than the parliamentary fare (*A.-G. v. Metr. Ry. Co.*, 50 L. J. Q. B. 573).

7 & 8 Vict.
c. 85, ss. 7-9.

7. And be it enacted, that if any railway company shall refuse or wilfully neglect to comply with the provisions of this Act as to the said cheap trains within a reasonable time, or shall attempt to evade the operation of such order, such company shall forfeit to her majesty a sum not exceeding twenty pounds for every day during which such refusal, neglect, or evasion shall continue.

Penalty for non-compliance.

[*Repealed, except as to Ireland, by the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).*]

8. Provided always, and be it enacted, that, except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates hereinbefore in such case provided, the lords of the said committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions hereinbefore required in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats, or other particulars, as to the lords of the said committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the lords of the said committee shall not be liable to any penalty for not observing the conditions which shall have been so dispensed with by the lords of the said committee in regard to the said cheap trains and the passengers conveyed thereby.

Board of Trade to have a discretionary power of allowing alternative arrangements.

[*Repealed, except as to Ireland, by the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).*]

The Board of Trade has no power to dispense with the first three conditions nor with the fifth condition named in section 6; the others may probably be dispensed with or qualified (*N. London Ry. Co. v. A.-G.*, 1 App. C. 148; 45 L. J. Ex. D. 315).

If therefore the Board of Trade has not approved of the hour of starting, the train is not a cheap train, although the parliamentary fare only is charged (*Git. W. Ry. Co. v. A.-G.*, L. R. 1 H. L. 1).

So too, if the rates are adjusted in such a way as to be above the parliamentary rate of a penny a mile to certain stations, the train is not a cheap train, and the exemption in section 9 does not apply (*N. London Ry. Co. v. A.-G.*, *supra*).

With regard to the fourth condition, it has been suggested that where there is one train satisfying the requirements of a cheap train, the Board of Trade may dispense with the fourth condition in the case of additional cheap trains (*ib.*).

Train A started from Broad Street to Dalston, taking passengers at a penny a mile and stopping at every station. Train B started later than train A, did not stop at intermediate stations, and came up with train A at Dalston. From Dalston the passengers by train A were carried on without unreasonable delay at the parliamentary rate, and stopping at every station. It was held that train A as far as Dalston and train B from Dalston were cheap trains (*ib.*).

Board of Trade cannot dispense with the first three nor with the fifth condition.

When the fourth condition may be dispensed with.

9. And be it enacted, that no tax shall be levied upon the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap trains as aforesaid.

When no tax to be levied.

[*Repealed, except as to Ireland, by the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).*]

7 & 8 Vict.
c. 85, ss. 10, 11.

When return
tickets are
not exempt.

The fares of all passengers by cheap trains, by whatever class they travel, are exempt, if not exceeding the parliamentary rate (*A.-G. v. N. London Ry. Co.*, L. R. 9 Ex. 330; see 1 App. C. 148).

Return tickets issued to second-class passengers at fares which, assuming them to make full use of their tickets, would not exceed the parliamentary rate, while the fare for a single journey would exceed that rate, are not exempt, the intention of the Act being that a passenger whose fare is to be exempt should have the option of travelling for any part of the journey at the parliamentary rate (*A.-G. v. N. London Ry. Co.*, L. R. 9 Ex. 330, pp. 336, 337).

Where the benefit of this exemption is claimed, the company must bring themselves precisely within the terms of it (*A.-G. v. Oxford, Worcester & Wolverhampton Ry. Co.*, 31 L. J. Ex. 218).

Where com-
panies run
trains on the
Sunday, cheap
trains to be
likewise pro-
vided.

[*Repealed,*
except as to
Ireland, by the
Cheap Trains
Act, 1883
(46 & 47 Vict.
c. 34).]

10. And be it enacted, that whenever any railway company subject to the hereinbefore mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its Act or Acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third class passengers at the terminal and other stations at which such Sunday train may ordinarily stop; and the fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled.

Railway com-
panies to
afford addi-
tional faci-
lities for the
transmission
of the mails.
1 & 2 Vict.
c. 98.

11. And whereas by an Act passed in the second year of the reign of her majesty, intituled "An Act to provide for the conveyance of the mails by railways," provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended; be it enacted, that it shall be lawful for the postmaster-general to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said Act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the inspector-general of railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour including stoppages; and it shall be also lawful for the postmaster-general to send any mail guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains other than a mail train, upon the same conditions as any other passenger; provided that in such last-mentioned case nothing herein or in the last-recited Act contained shall be construed to authorize the postmaster-general to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

It has been said in Scotland that although the section says that such mail guard is only to be carried "on the same conditions as any other passenger," the company would not be entitled to prevent him changing his bags at every station at which the train stops, although probably an ordinary passenger would not be entitled so

to change his luggage (*Lord Advocate v. Edinburgh, Perth & Dundee Ry. Co.*, 8 March, 1851, 13 Sc. Sess. Ca. (2nd Series) 907; 23 Jur. 424).

7 & 8 Vict.
c. 85, s. 12.

12. And whereas by an Act passed in the sixth year of the reign of her majesty, intituled "An Act for the better regulation of railways, and for the conveyance of troops," it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of her majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessities and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the secretary at war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: And whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from parliament; be it enacted, that all railway companies which have been or shall be incorporated by any Act of the present or any future session, or which by any Act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous Acts or any of them, or have been or shall be authorized to do any Act unauthorized by the provisions of such previous Acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding two pence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by Act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundred weight of personal luggage, without extra charge, and every soldier, marine, private, wife or widow shall be entitled to take with him or her half a hundred weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessities and things (except gunpowder and other combustible matters, which the company shall only be bound to convey

Certain companies to convey military and police forces at certain charges.
5 & 6 Vict.
c. 55.

[*Repealed, except as to Ireland, by the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), and except as mentioned below. See note.*]

[By 16 & 17 Vict. c. 69, s. 18, naval forces are to be carried on same terms as military and police.]

7 & 8 Vict.
c. 85,
ss. 13, 14.

at such prices and upon such conditions as may be from time to time contracted for between the secretary at war and the company), shall be conveyed at charges not exceeding two pence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.

This section is repealed by section 10 of the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), except as respecting the conveyance of forces by companies who lose the benefit of that Act, namely, companies which neglect to comply with an order under the Act to provide proper and sufficient accommodation or workmen's trains, see section 3 (1) and (3).

Upon the construction of this section it has been held in Ireland, that the company are bound to carry the baggage of the whole battalion at the reduced rate, though only a part of the battalion may accompany it (*A.-G. v. Gt. S. & W. Ry. Co.*, 14 Ir. C. L. 447).

Section enforceable by contractor.

A carrier who has contracted for the carriage of military stores and baggage is entitled to have the same carried at the statutory rate (*Gt. S. & W. Ry. Co. v. Robertson*, 2 L. R. Ir. 549).

Companies to allow lines of electrical telegraph to be established.

13. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation; be it enacted, that every railway company, on being required so to do by the lords of the said committee, shall be bound to allow any person or persons authorized by the lords of the said committee, with servants and workmen, at all reasonable times to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway a line of electrical telegraph for her majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on her majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the lords of the said committee, or in case of disagreement as may be settled by arbitration: provided always, that, subject to a prior right of use thereof for the purposes of her majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Electrical telegraph established by private parties to be opened to the public.

14. And be it enacted, that where a line of electrical telegraph shall have been established upon any railway by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for her majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the prior right of use thereof for the service of her majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

[15 & 16 are repealed by 34 & 35 Vict. c. 78, s. 17.]

17. And be it enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several Acts of Parliament regulating any railway company, or the provisions of this Act or of any general Act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provisions of the Act or Acts of Parliament relating to such railway, or in excess of the powers given and objects defined by the said Act or Acts, and it shall also appear to the lords of the said committee that it would be for the public advantage that the company should be restrained from so acting, the lords of the said committee shall certify the same to her majesty's attorney-general for England or Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the said attorney-general or lord advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the Act or Acts relating thereto or of this Act, or of any general Act relating to railways, proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said Acts; and in case the default of the railway company shall consist in the commission of some act or acts unauthorized by law, then the said attorney-general or lord advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity or other judge to whom the application is made shall be authorized and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorized by law,) to restrain the committee from acting in such illegal manner, or to give such other relief as the nature of the case may require.

7 & 8 Vict.
c. 85,
ss. 17, 18.

If railway companies contravene or exceed the provisions of their Acts, or of any general Act, the Board of Trade to certify the same to the Attorney-General, &c., who shall proceed against them.

The Attorney-General is bound to act on receiving the certificate of the Board of Trade (*A.-G. v. Gl. Northern Ry. Co.*, 29 L. J. Ch. 794).

The court in which the suit or other legal proceeding is taken will not inquire into the reasons for which the certificate was given (*A.-G. v. Oxford & Wolverhampton Ry. Co.*, 2 W. R. 330).

18. Provided always, and be it enacted, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to give such certificate; and that no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against any of the several Acts relating to railways or this Act, or any general Act relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

Notice to be given to the company.

Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

7 & 8 Vict.
c. 85,
ss. 19-22.

Issue of loan
notes and
other illegal
securities by
railway com-
panies pro-
hibited.

19. And whereas many railway companies have borrowed money in a manner unauthorized by their Acts of Incorporation or other Acts of Parliament relating to the said companies, upon the security of loan notes or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the meantime: and whereas such loan notes or other securities issued otherwise than under the provision of some Act or Acts of Parliament have no legal validity, and it is expedient that the issue of such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued; be it enacted, that from and after the passing of this Act any railway company issuing any loan note or other negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some Act or Acts of Parliament authorizing the said railway company to raise such money and to issue such security, shall for every such offence forfeit to her majesty a sum equal to the sum for which such loan note or other instrument purports to be such security. [*Proviso repealed by Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. s. 96.*]

As to borrowing by a railway company, see the notes to section 38 of the Companies Clauses Act, 1845, *post*.

Hire purchase
agreement.

A sale by a railway company of its rolling stock to a wagon company with a contemporaneous agreement by the railway company to hire the rolling stock for a term of years at a rent which would repay the purchase-money and interest by the end of the term, with an option to the railway company to purchase the stock at a nominal sum is a valid arrangement, and is not impeachable under this section (*Yorkshire Ry. Wagon Co. v. Maclure*, 21 Ch. D. 309; *North Central Wagon Co. v. Manchester, &c. Ry. Co.*, 32 Ch. D. 477; rev. W. N. 1886, 201).

[**20** is repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96.]

Register of
loan notes.

21. And be it enacted, that a register of all such loan notes or other instruments shall be kept by the secretary; and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Remedy for
recovery of
tithe rent
charged on
railway land.

22. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, that in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the Acts for the commu-

tation of tithes in England and Wales, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this Act such rent-charge was not or could not be duly apportioned.

7 & 8 Vict.
c. 85,
ss. 23-25.

[23 is repealed by 31 & 32 Vict. c. 119, s. 47.]

24. And be it enacted, that all penalties under this Act for the application of which no special provision is made shall be recovered in the name and for the use of her majesty, and may be recovered in any of her majesty's courts of record, or in the court of session or in any of the sheriff courts in Scotland.

Penalties.

25. And be it enacted, that where the word "railway" is used in this Act it shall be construed to extend to railways constructed under the powers of any Act of Parliament; and when the words "passenger railway" are used in this Act, they shall be construed to extend to railways constructed under the powers of any Act of Parliament upon which one third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "company" is used in this Act it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

Interpreta-
tion of Act.

THE
COMPANIES CLAUSES CONSOLIDATION
ACT, 1845.

8 VICT. c. 16.

8 Vict.
c. 16, ss. 1, 2.

An Act for consolidating in One Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature.
[8th May, 1845.]

Act to apply
to all com-
panies incor-
porated by
Acts hereafter
to be passed.

WHEREAS it is expedient to comprise in one general Act sundry provisions relating to the constitution and management of joint stock companies, usually introduced into Acts of Parliament authorizing the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

With reference to incorporation, see the Lands Clauses Consolidation Act, notes to sections 1, 5, and 80.

Interpreta-
tions in this
Act:

"the special
Act: "

2. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows:

The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed incorpo-

rating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature which shall by the special Act be authorized to be executed.

§ Vist.
c. 16, s. 3.

"pre-
scribed: "

"the under-
taking: "

3. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Interpreta-
tions in this
and the
special Act.

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number;

Number:

Words importing the masculine gender only shall include females;

Gender:

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure;

"Lands: "

The word "lease" shall include an agreement for a lease;

"Lease: "

The word "month" shall mean calendar month;

"Month: "

The expression "superior courts" shall mean her majesty's superior courts of record at Westminster or Dublin, as the case may require;

"Superior
courts: "

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath;

"Oath: "

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town;

"County: "

The word "justice" (a) shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested (b) in the matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" (c) shall be understood to mean two justices assembled and acting together in petty sessions;

"Justice: "

"Two jus-
tices: "

The expression "the company" shall mean the company constituted by the special Act;

"the com-
pany: "

The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name;

"Directors: "

The word "shareholder" (d) shall mean shareholder, proprietor,

"Share-
holder: "

8 Vict.
c. 16, ss. 4, 5.

“Secretary.”

or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation; and

The expression “the secretary” shall mean the secretary of the company, and shall include the word “clerk.”

Police
magistrate.

(a) By 2 & 3 Vict. c. 71, s. 14, any one of the metropolitan police magistrates may do alone, at any of the police courts, any act directed to be done by more than one justice except acts to be done at a special petty or quarter session.

Disqualifying
interest.

(b) A direct pecuniary interest is a disqualification (*R. v. Cheltenham Commissioners*, 1 Q. B. 467; *R. v. Justices of Hertfordshire*, 6 Q. B. 753; *R. v. Commissioners of Sewers for Essex*, 14 Q. B. D. 561).

Shareholder.

Thus a justice who is a shareholder is a person interested for the purpose of inflicting a fine on a person travelling without a ticket, though the fine goes in aid of the borough rates (*R. v. Hammond*, 12 W. R. 209; see *Todd v. Robinson*, 14 Q. B. D. 739).

Remote
interest.

But a remote or contingent interest, such as an interest depending upon the completion of a parliamentary arrangement between certain companies, is not a disqualifying interest (*R. v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 36 L. J. Q. B. 171; 16 L. T. N. S. 173; 15 W. R. 676; L. R. 2 Q. B. 336).

Interest as
trustee.

Justices who are mere trustees of a fund which may be indirectly benefited by their decision are not disqualified, unless actual bias is shown (*R. v. Rand*, 7 B. & S. 297; 35 L. J. M. C. 157; L. R. 1 Q. B. 231).

Members of
local boards
authorized to
act as justices.

Where members of a town council or local board are empowered by statute to act as justices in matters arising under the Statute, although they may be ratepayers or liable to payments under the Statute, they are not disqualified from acting, unless some ground is shown for supposing substantial interest or likelihood of bias (*Reg. v. Handsley*, 8 Q. B. D. 383; not following *Reg. v. Gibbon*, 6 Q. B. D. 168. See, too, *Reg. v. Bishop of St. Albans*, 9 Q. B. D. 454).

Similarly, where the town council had made an order under the Dogs Act, 1871, as to muzzling dogs, justices, members of the council, were not disqualified to hear a complaint of non-observance of the order (*Reg. v. Huntingdon*, 4 Q. B. D. 522).

But a member of a local board who has taken an active part in directing proceedings under the Statute is disqualified from acting as justice in reference to the proceedings (*Reg. v. Milledge*, 4 Q. B. D. 332; *Reg. v. Lee*, 9 Q. B. D. 394. See, too, *Grand Junction Canal Co. v. Dimes*, 2 M. & G. 285; 3 H. L. C. 759; *Wildes v. Russell*, L. R. 1 C. P. 722; *Reg. v. Meyer*, 1 Q. B. D. 173).

So, a justice who is himself an appellant against a rate is disqualified to hear other appeals of the same nature (*R. v. Justices of Yarmouth*, 30 W. R. 360; 51 L. J. M. C. 39).

Objection of
interest may
be waived.

The words “who shall not be interested in the matter” declare the common law, and do not confine the jurisdiction to justices not interested; therefore an objection on the ground of interest may be waived by the parties (*Wakefield Board of Health v. West Riding & Grimsby Ry. Co.*, 35 L. J. M. C. 69; 6 B. & S. 794; L. R. 1 Q. B. 84).

Proceedings
by more than
two justices
good.

(c) Proceedings authorized or required to be done by two justices are not vitiated because more than two justices are present (*R. v. Commissioners of Rochdale Improvement Act*, 2 Jur. N. S. 861).

(d) As to the word “shareholder,” see *Portal v. Emmens*, 1 C. P. D. 201; and see sections 6 *et seq.*, *post*.

Short title of
the Act.

4. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression “The Companies Clauses Consolidation Act, 1845.”

Form in
which por-
tions of this
Act may be
incorporated
with other
Acts.

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses and provisions of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words intro-

ductory to the enactment with respect to such matter) shall be incorporated with such Act; and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

8 Vict.
c. 16, ss. 6-8.

And with respect to the distribution of the capital of the company into shares, be it enacted as follows:

Distribution of
capital.

6. The capital of the company shall be divided into shares of the prescribed number and amount; and such shares shall be numbered in arithmetical progression, beginning with number one; and every such share shall be distinguished by its appropriate number.

Capital to be
divided into
shares.
[The Companies Clauses
Act, 1863, 26
& 27 Vict. c.
118, ss. 13-
21, contains
provisions as
to the creation
of preference
shares.]

The provision with regard to the numbering of the shares is merely directory (*Portal v. Emmens*, 1 C. P. D. 201, 664). In *Irish Peat Co. v. Phillips*, 1 B. & S. 598, 629; 30 L. J. Q. B. 114, 363; 9 W. R. 416, 873, the decision in the court below that the numbering the shares was essential was not adopted by the Ex. Ch., though the decision was affirmed on other grounds. (See, too, *East Gloucestershire Ry. Co. v. Bartholomew*, L. R. 3 Ex. 15.)

This section does not prevent the company from reducing the amount of the shares (*Ambergate Ry. Co. v. Mitchell*, 6 R. C. 235).

7. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

Shares to be
personal
estate.

It is now settled that shares in an incorporated company, whether declared to be personal estate or not, are not within the Statute of Mortmain (*Edwards v. Hall*, 6 D. M. & G. 74).

Shares are
personality.

Shares are property in respect of which bail may justify (*Pierpoint v. Brewer*, 15 M. & W. 201).

Certificates of railway stock are not goods within the Factors' Acts, 1823 to 1877 (*Freeman v. Appleyard*, 32 L. J. Ex. 175).

Shares are not within sections 4 or 17 of the Statute of Frauds (*Bradley v. Holdsworth*, 3 M. & W. 422; *Humble v. Mitchell*, 11 Ad. & E. 205; *Duncuft v. Albrecht*, 12 Sim. 189; *Tempest v. Kilner*, 3 C. B. 249).

Shares not
within
Statute of
Frauds.

Nor are they goods and chattels within 13 Eliz. c. 5, relating to conveyances, to hinder and defraud creditors (*Dundas v. Dutens*, 1 Ves. 196; *Glogau v. Cooke*, 2 Ball & B. 230).

Not within
13 Eliz. c. 5.

Shares are, however, things in action within the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sect. 44 (iii.). They are, therefore, not within the order and disposition clause (*Colonial Bank v. Whinney*, 11 App. C. 426; overruling *Ex parte Union Bank of Manchester*, 12 Eq. 354. See, too, *G. E. Ry. Co. v. Turner*, 8 Ch. 149; *Ex parte Barry*, *In re Fox*, 17 Eq. 113).

Shares are
things in
action.

8. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company.

Shareholders.

It is usual before the passing of an Act of Parliament authorizing a railway to issue letters of allotment and scrip certificates entitling the bearer to claim shares in the undertaking; such scrip certificates do not in themselves constitute a person a shareholder liable to calls.

Letters of
allotment.

By the Stamp Act, 1870 (33 & 34 Vict. c. 97), letters of allotment or scrip certificates are chargeable with a penny stamp.

Stamp.

8 Vict.
c. 16, s. 8.

Scrip certi-
ficates.

Unregistered
transferee.

Provision
prohibiting
issue till pay-
ment of a per
centage.

Right of
scripholders.

Whether
transferee
must be
registered.
Who is a
subscriber.

Shareholder
liable not-
withstanding
provision
against issue
till a certain
sum paid.

Sale of scrip
by share-
holder.

Discharge of
shareholder.

Variations
between
scheme pro-
posed and
allowed.

Power to
amalgamate.

Registration.

Where an application is made for shares on certain terms, and by letters of allotment shares are allotted on different terms, which are not accepted in writing, though acted upon by the allottee, the whole contract not being in writing, no stamp is necessary (*Vollans v. Fletcher*, 5 R. C. 73; 1 Ex. 20; *Willey v. Parratt*, 6 R. C. 32).

Scrip certificates are, it would seem, transferable by delivery (*Rumball v. Metrop. Bk.*, 2 Q. B. D. 194).

But an unregistered transferee of scrip certificates is not liable to calls (*Newry & Enniskillen Ry. v. Edmunds*, 2 Ex. 118; 17 L. J. Ex. 102).

Where no share is to be issued till the payment of 20 per cent. on the nominal value, and the company issue scrip certificates on which 10 per cent. is paid, the company cannot compel the allottee of such scrip certificate to become a shareholder, and his name will be removed from the register if improperly inserted (*Eustace v. Dublin Trunk Ry. Co.*, 6 Eq. 182; *In re Asiatic Banking Corporation*, 9 Eq. 236; *McIlraith v. Dublin Trunk Ry. Co.*, 7 Ch. 134).

The right of the scripholder in such a case is to call for shares when the time for registration comes; but the company is entitled to disregard the claims of holders who do not apply within a reasonable time (*ib.*).

It is no answer to a scripholder who requires to be registered as a shareholder that the authorized number of shares has been already issued, as it lies upon the company to show that the register is properly filled (*Daly v. Thompson*, 10 M. & W. 309).

Where the vendor of scrip certificates is registered a shareholder, owing to the neglect of his purchaser to apply for registration, and the vendor sells the shares, he is bound to account for the money to the holder of the scrip (*Beckitt v. Bilbrough*, 8 Hare, 188).

It seems the transferee of scrip certificates cannot, in the absence of a special agreement, be compelled by his transferor to place himself on the register and to indemnify the transferor (*Jackson v. Cocker*, 2 R. C. 368; 4 B. 59).

Where several persons agree that on the passing of an Act for the construction of a railway they will subscribe for a certain number of shares, they are subscribers within this section, and after the passing of the Act, upon being entered on the register, though without allotment or notice of registration, they become shareholders (*Burke v. Lechmere*, L. R. 6 Q. B. 297. See also *Thames Tunnel Co. v. Sheldon*, 6 B. & C. 341; 9 D. & R. 278).

A person who has become a shareholder is liable for his shares, though the Act creating the company may contain a special provision that the company shall not issue shares, and that no shares shall vest in the person accepting the same until one-fifth of the amount of the shares has been paid up. The effect of the provision is to prevent the shareholder from transferring his liability as between himself and the company till the shares are duly issued (*East Gloucestershire Ry. Co. v. Bartholomew*, L. R. 3 Ex. 15; *Purdey's Case*, 16 W. R. 660; *McEuen v. West London Wharves & Warehouses Co.*, 6 Ch. 655). Therefore in such a case a shareholder is not released from liability by selling scrip certificates to a purchaser who has to a certain extent been recognized by the company (*McEuen v. West London Wharves & Warehouses Co.*, 6 Ch. 655).

A person who has once become a shareholder in a company does not get rid of his liability by selling scrip certificates issued to him in respect of his shares, though he may not have been registered as a shareholder till after he has sold his scrip certificates (*Midland G. W. Ry. Co. v. Gordon*, 16 M. & W. 804; 5 R. C. 76).

But his liability is discharged when his vendee has been registered as shareholder (*London Grand Junction Ry. Co. v. Freeman*, 2 M. & Gr. 606; 2 So. N. R. 705; *Birmingham, Bristol & Thames Junction Ry. Co. v. Locke*, 1 Q. B. 256; *London Grand Junction Ry. Co. v. Graham*, *ib.* 271; *Sheffield Ry. Co. v. Woodcock*, 2 R. C. 522).

A person who becomes a subscriber to a particular undertaking to be authorized by a contemplated Act is not released from liability by slight variations between the undertaking authorized by the Act and the undertaking contemplated (*Midland Gt. Western Ry. Co. v. Gordon*, 16 M. & W. 805, where a railway was contemplated from A to B, *via* C, and the Act authorized the purchase of a canal from B to C and the construction of a railway only from A to B).

So, too, a person who has subscribed to an undertaking which the subscribers' agreement authorizes the directors to amalgamate with any similar undertaking, becomes a shareholder in the amalgamated undertaking (*The Cork & Youghal Ry. Co. v. Paterson*, 18 O. B. 414).

And generally where the subscribers' agreement authorizes the directors to vary or abandon any part of the undertaking, the subscriber remains liable to the company as altered (*Nixon v. Brownlow*, 2 H. & N. 455; 26 L. J. Ex. 273, on appeal, 27 *ib.* 509).

It seems that the words "and whose name shall have been entered on the

register of shareholders," are descriptive merely, and do not make registration a condition precedent to liability as a shareholder, at any rate as regards third persons (see *Wolverhampton New Waterworks Co. v. Hawkesford*, 7 C. B. N. S. 795, p. 814; *Portal v. Emmens*, 1 C. P. D. 201, 664).

Thus persons incorporated into a company by the special Act, and also named directors, where a certain number of shares is prescribed as the qualification for a director, become members of the company, and must be considered as holding the necessary qualification, though there may be no register of members (*Portal v. Emmens*, 1 C. P. D. 201, 664).

Where a person has become a member of a company in respect of a certain number of shares, the company may accept a surrender of his liability before any shares are allotted, and the evidence of an acceptance need not be as express as would be required where shares have been allotted. Thus, where a director appointed by the special Act soon afterwards resigned, and all the shares were allotted to others, it was held that the company had abandoned their right to treat him as a shareholder, and that a person who became a creditor of the company after the resignation stood in no better position than the company (*Kipling v. Todd*, 3 C. P. D. 350. See, too, *Barry v. Navan & Kingscourt Ry. Co.*, 1 R. 11 C. L. 403).

A person who has entered into a valid contract to take fully paid-up shares cannot be made liable to the company or its creditors for shares not fully paid, registered in his name (*Ashworth v. Bristol, &c. Ry. Co.*, 15 L. T. N. S. 561; *Guest v. Worcester, &c. Ry. Co.*, L. R. 4 C. P. 9).

A person who proposes to subscribe for 100 shares and receives a letter from the company allotting him 50 shares and informing him that scrip certificates will be delivered on payment of a deposit and execution of the parliamentary contract and subscribers' agreement, is not a "subscriber," if he does not execute the contract, though he may pay the deposit (*Waterford, Wexford, Wicklow & Dublin Ry. Co. v. Pidcock*, 8 Ex. 279). Probably, however, he could not recover his deposit; he cannot, at any rate, prove for it against the company (*Ex parte Clarke*, 5 R. C. 394).

An allotment of shares in pursuance of an offer to take shares does not constitute a binding contract without notice of allotment sent to the allottee (*Pellatt's Case*, 2 Ch. 527; *Gunn's Case*, 3 Ch. 40).

Sending notice of allotment to an agent of the company is, of course, not notice to the allottee (*Hebb's Case*, 4 Eq. 9).

An application for shares followed by the posting of a letter of allotment within a reasonable time constitutes a binding contract from the date of the posting of the letter of allotment, at any rate if the letter subsequently reaches the allottee (*Dunlop v. Higgins*, 1 H. L. 381; *Harris's Case*, 7 Ch. 587).

And as the law at present stands, the contract is complete from the posting of the letter to the allottee, whether it reaches him or not (*Harris's Case*, 7 Ch. 587; *Household Fire Co. v. Grant*, 48 L. J. Ex. 219; 4 Ex. D. 216. The case of *British & American Telegraph Co. v. Colson*, L. R. 6 Ex. 108, must be considered overruled).

In *Townsend's Case*, 13 Eq. 148, it was held that if the letter does not reach the allottee owing to his own negligence in giving an inaccurate address, the contract is complete, at any rate from the time when but for his fault the letter would have reached him.

Where the letter of allotment was not stamped as required by the Stamp Act, 1870, and a properly stamped letter was not sent till after the allottee had repudiated his shares, it was nevertheless held that the contract was complete (*In re Whitley Partners*; *Steel's Case*, 28 W. R. 241).

A person who has been induced to take shares in a company by fraud on the part of the company or any of its agents, is entitled to have his contract rescinded and to have the money he has paid returned; but he must apply for relief as soon as he discovers the real facts (*Directors of the Central Ry. Co. of Venezuela v. Kisch*, L. R. 2 H. L. 99. See *Heymann v. European Central Ry. Co.*, 7 Eq. 154).

Anything amounting to acquiescence on the part of the shareholder after he has discovered the true state of things, or even unreasonable delay, will deprive him of his right to have the contract rescinded (*Sharpley v. Louth & East Coast Ry. Co.*, 2 Ch. D. 663. Upon the question of delay, see *Erlanger v. Sombrero Phosphate Co.*, 3 App. C. 1218).

So, too, the right to rescind will be gone if in the meantime third persons have acquired rights. Thus, in cases under the Companies Acts, it has been held that a shareholder cannot rescind his contract after an order for winding up the company, whether voluntarily or compulsorily, or after the company has in fact become insolvent, though the winding up has not commenced (*Oakes v. Turquand*, L. R. 2

8 Viet.
c. 16, s. 8.

Surrender
before
allotment.

Contract to
take paid-up
shares.

Allotment
without
notice.
Notice to
unauthorized
agent.
When con-
tract com-
plete.

Erroneous
address.

Letter of
allotment not
stamped.

Fraud.

Acquiescence.

Intervention
of rights of
third persons.

8 Vict.
c. 16, ss. 9-11.

Effect of
winding up.

Registry of
shareholders.

Register not
in all cases
necessary.

Court will
rectify
register.

Addresses of
shareholders.
[By 31 & 32
Vict. c. 119,
s. 34, the
Address
Book, cor-
rected up to
December in
each year, is
to be printed
and supplied
to share-
holders on
payment of
6s.]

Certificates of
shares to be

H. L. 325; *Stone v. City & County Bank*, 3 C. P. D. 283; *Tennent v. City of Glasgow Bank*, 4 App. C. 615; *In re Whitley Partners, Steel's Case*, 28 W. R. 241).

But if proceedings are commenced by a shareholder before the company has become insolvent his right to relief will not be destroyed by a subsequent winding-up order (*Reese Silver Mining Co. v. Smith*, L. R. 6 H. L. 64; *Henderson v. Lacon*, 5 Eq. 249).

9. The company shall keep a book to be called the "register of shareholders;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such book shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

For the purpose of paying debts, entry upon the register, or even the existence of a register, is not material (*Portal v. Emmens*, 1 C. P. D. 201, 664).

The section does not require the number of the shares to be inserted on the register, and it may be shown *aliunde* that the shares were in fact numbered (*East Gloucestershire Ry. Co. v. Bartholomew*, L. R. 3 Ex. 15).

As to whether the numbering is essential, see *ante*, section 6.

The section is merely directory so far as the requisites for constituting a shareholder are concerned, though it must be substantially complied with in order to make the register evidence under section 28; see notes there (*East Gloucestershire Ry. Co. v. Bartholomew*, L. R. 3 Ex. 15. See, too, *Portal v. Emmens*, 1 C. P. D. 201, 664).

Thus it is immaterial that the register does not contain the number of the shares (*East Gloucestershire Ry. Co. v. Bartholomew*, L. R. 3 Ex. 15); or that it is not sealed (*Wolverhampton Waterworks Co. v. Hawkesford*, 7 C. B. N. S. 795; 11 *ib.* 456); or not sealed within the time mentioned (*Burke v. Lechmere*, L. R. 6 Q. B. 297).

The Court has jurisdiction in a proper case to rectify the register (*Ashworth v. Bristol Ry. Co.*, 15 L. T. N. S. 561).

A mandamus will not be granted to remove the seal alleged to have been improperly affixed (*Ex parte Nash*, 15 Q. B. 92; 19 L. J. Q. B. 296).

10. In addition to the said register of shareholders, the company shall provide a book, to be called the "shareholders' address book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several other shareholders, with their respective christian names, places of abode, and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a corporation, the clerk or agent of such corporation, may at all convenient times peruse such book *gratis*, and may require a copy thereof or of any part thereof; and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence.

11. On demand of the holder of any share the company shall

cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the schedule (A.) to this Act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed then a sum not exceeding two shillings and sixpence.

8 Vict.
c. 16,
ss. 12, 13.

issued to the
shareholders.

Where a company has issued a certificate to A., and B. becomes the purchaser of the shares from A., and it turns out afterwards that A. had in fact no title to the shares because they were transferred to him by a forged transfer, the company is bound to make good the representation made by the certificate issued to A., and B. is entitled to the value of the shares at the time the company first refused to recognize him as a shareholder, with interest at 4 per cent. (*In re Bahia and San Francisco Ry. Co.*, L. R. 3 Q. B. 584; see *Hart v. Frontino and Bolivia, &c. Co.*, L. R. 5 Ex. 111).

Estoppel.

So if, under a forged transfer, shares are transferred to A. in trust for B. and a certificate is issued to A., and A. afterwards makes advances upon the security of the shares to B., A., as long as he remains mortgagee of the shares, would have a right of action against the company if they deny A.'s title to the shares (*Simm v. Anglo-American Telegraph Co.*, 5 Q. B. D. 188).

Forged
transfer.

This doctrine has been applied where the secretary issued the certificate without authority and forged the signature of one of the directors (sed qu. *Shaw v. Port Philip, &c. Mining Co.*, 13 Q. B. D. 103; and see *British Mutual Banking Co. v. Charnwood Forest Ry. Co.*, 18 Q. B. D. 714).

But if a company register a transferee of shares and issue to him a certificate, and the transfer proves a forgery, the company are not estopped from denying the title of the transferee, and if the transferee, being a trustee, has made advances upon the security of the shares after the issue of the certificate, the estoppel in his favour while he is mortgagee ceases when he is paid off (*Waterhouse v. L. & S. W. Ry. Co.*, 41 L. T. 553; *Simm v. Anglo-American Telegraph Co.*, 5 Q. B. D. 188).

Where a company issues a certificate stating that shares are fully paid, they cannot, against a purchaser of the shares, set up that the shares are not fully paid (*Burkinshaw v. Nicolls*, 3 App. Cas. 1004).

If a company agrees to issue to a contractor debenture stock, and the directors issue the debenture stock in ignorance that all the debenture stock which the company has power to issue has been issued, the directors are liable in damages to the holders of the debenture stock, on the ground of breach of warranty of authority (*Firbank's Executors v. Humphreys*, 18 Q. B. D. 54).

Overissue of
debenture
stock.

The measure of damages would seem to be the value of the debenture stock which ought to have been allotted, less possibly the amount which the allottees can recover from the company (*Ib.* See, too, notes to section 38, *post*).

Where the shares cannot be transferred without production of the certificate it has been held that the fact that the certificate of shares registered in the mortgagor's name are deposited with a mortgagee would take the shares out of the order and disposition of the mortgagor (*Colonial Bank v. Whinney*, 11 App. Cas. 426. See *Ex parte Boulton*, 1 Do G. & J. 163; *In re Grehan*, I. R. 1 Eq. 84).

Order and
disposition.

12. The said certificates shall be admitted in all courts as *prima facie* evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Certificate to
be evidence.

13. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or

Certificate to
be renewed
when de-
stroyed.

8 Vict.
c. 16, s. 14.

destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, a sum not exceeding two shillings and sixpence.

Transfer of
Shares.

And with respect to the transfer or transmission of shares, be it enacted as follows:

Transfers of
shares to be
by deed duly
stamped.

14. Subject to the regulations herein or in the special Act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the form in the schedule (B.) to this Act annexed, or to the like effect.

Parol
contract.

A parol agreement to transfer railway shares, even though nothing has been paid on them, can be specifically enforced (*Duncuft v. Albrecht*, 12 Sim. 189, 199; *Cheale v. Kenward*, 3 De G. & J. 27; *Humble v. Mitchell*, 2 R. C. 70; 11 A. & E. 205).

The transferee will be bound to indemnify the vendor and to have himself properly registered (*Wynne v. Price*, 3 De G. & Sm. 310; 5 R. C. 465; *Shaw v. Fisher*, 2 De G. & Sm. 11; 5 D. M. & G. 596; 5 R. C. 461; *Sayles v. Blane*, 14 Q. B. 205; *Paine v. Hutchinson*, 3 Ch. 388; *Hawkins v. Maltby*, 4 Ch. 200. See 4 Drew. 636. The case of *Humble v. Langston*, 7 M. & W. 517, if *contrâ*, must be considered overruled. See *Walker v. Barilett*, 18 C. B. 845, 862).

Real pur-
chaser must
indemnify.

If the contract is entered into with a nominee or trustee for the purchaser and a transfer executed to the nominee, the real purchaser will be bound to indemnify the vendor (*Castellan v. Hobson*, 10 Eq. 47; *Brown v. Black*, 8 Ch. 939. See *Maynard v. Eaton*, 9 Ch. 414. The case of *Torrington v. Lowe*, L. R. 4 C. P. 26, if *contrâ*, must be considered overruled).

Where there are several purchasers each will be bound to indemnify the vendor to the extent of his interest. They will not be jointly and severally liable for the whole number of shares (*Brown v. Black*, *supra*).

Pending call.

The fact that at the date of the contract a call has been made, of which the purchaser is not aware, would not, it seems, be a defence to an action for specific performance by the vendor (*Hawkins v. Maltby*, 3 Ch. 190; 4 Ch. 200).

Agreement
by company
to buy its own
shares.

A company having power to purchase its own shares cannot, after it has become insolvent, be compelled to register a transfer of shares which it has contracted to purchase (*Nelson Mitchell v. City of Glasgow Bank*, 4 App. C. 624).

Remedy
against direc-
tors.

Where directors, who have agreed to allot shares to a plaintiff, allot all the shares to other persons, the plaintiff's proper remedy is an action for damages, and not for specific performance or indemnity (*Ferguson v. Wilson*, 2 Ch. 77).

Sales on Stock
Exchange.

In the case of sales upon the Stock Exchange the practice is for the broker to sell to a jobber, and, after several subpurchases, the name of the ultimate purchaser is passed to the vendor. If the vendor accepts the name and executes a transfer which is accepted by the transferee, the contract between the ultimate purchaser and vendor is complete, notwithstanding the intermediate sales at varying prices, and may be specifically enforced or damages may be recovered (*Musgrave & Hart's Case*, 5 Eq. 193; *Evans v. Wood*, 5 Eq. 9; *Hodgkinson v. Kelly*, 6 Eq. 496; *Bowring v. Shepherd*, L. R. 6 Q. B. 309. See *Davis v. Haycock*, L. R. 4 Ex. 373).

Purchaser's
broker binds
principal.
Jobber's
liability.

An acceptance of the transfer by the purchaser's brokers is sufficient to bind the purchaser (*Sheppard v. Murphy*, L. R. 2 Eq. 544; *Bowring v. Shepherd*, L. R. 6 Q. B. 309; *Loring v. Davis*, 32 Ch. D. 625).

The purchasing jobber is discharged from liability as soon as the name of a person competent to accept shares has been furnished to the vendor and a transfer

has been executed by him and accepted by the transferee (*Grissell v. Bristowe*, L. R. 4 C. P. 37; *Coles v. Bristowe*, 4 Ch. 3).

8 Vict.
c. 18, s. 14.

It is immaterial that the transferee is only a nominee for the purchaser or a man of straw if he has in fact been accepted by the vendor (*Marted v. Paine* (2nd action), L. R. 6 Ex. 132).

It would seem to be doubtful whether the vendor could refuse to accept a name passed by the jobber where it represents a real person capable of contracting (see *Marted v. Paine*, L. R. 6 Ex. 132. In *Allen v. Graves*, L. R. 5 Q. B. 478, it was expressly held that the contract was out of the ordinary course of business, and not within the customs of the Stock Exchange).

Refusal to
accept name.

If, however, the jobber guarantees registration, he is not discharged till the transferees have been accepted by the company and duly registered (*Cruse v. Paine*, 4 Ch. 441).

Registration
guaranteed.

The jobber is not discharged by giving the name of a person from whom he has no authority, or the name of an infant or other person incapable of being the holder of shares (*Marted v. Paine*, L. R. 4 Ex. 81; *Nickalls v. Merry*, L. R. 7 H. L. 530. See *Heritage v. Paine*, 2 Ch. D. 594).

Passing name
of infant.

Upon a sale of shares the purchaser is entitled to a dividend declared after the contract has been entered into, though before the time appointed for completion (*Black v. Hamersham*, 4 Ex. D. 24).

Dividend
after contract.

A person who employs a broker to speculate in shares for him on the Stock Exchange, the intention being not to buy shares, but only to pay or receive the differences between the contract and market price on the settling day, is bound to indemnify the broker against sums he is compelled to pay (*Thacker v. Hardy*, 4 Q. B. D. 685, and see the cases there cited; *Ex parte Rogers*, 15 Ch. D. 207).

Stamp on sale
of scrip.

A written agreement for the sale of scrip in a railway company must be stamped with a sixpenny stamp (see *Knight v. Barber*, 16 M. & W. 66).

Transfers to
increase vot-
ing power.

There is no equity to prevent the transfer of shares to a nominee to increase voting power (*Pender v. Lushington*, 6 Ch. D. 70; *Moffatt v. Farguhar*, 7 Ch. D. 591).

But directors may be restrained from acting upon an old resolution for the issue of shares where the issue is intended to secure votes in favour of the directors (*Fraser v. Whalley*, 2 H. & M. 10).

Transfer in
blank.

A deed of transfer in which the name of the transferee is left in blank and afterwards filled up by an agent is void as a deed (*Hibblewhite v. M'Morine*, 6 M. & W. 200; *Société Générale de Paris v. Walker*, 11 App. C. 20; see *Colonial Bank v. Hepworth*, 36 Ch. D. 36).

Estoppel.

Where a transferee signs a deed of transfer and procures himself to be registered, he cannot dispute his liability to the company though the transferor executed the transfer in blank (*Sheffield, Ashton-under-Lyne, &c. Ry. Co. v. Woodcock*, 7 M. & W. 574; 2 R. C. 522; *Straffon's Executors' Case*, 1 D. M. & G. 576. See *Re Barnard's Banking Co.*, 16 L. T. N. S. 514; 3 Ch. 105).

Where the company omits certain formalities required for the validity of a transfer they will, nevertheless, be bound by it as between the transferor and the company (*Bargate v. Shortridge*, 5 H. L. 297).

Tender of
deed.

It appears to be the duty of the purchaser to tender a deed of transfer (*Stephens v. Medina*, 3 R. C. 454; 4 Q. B. 422; *Bowlby v. Bell*, 4 R. C. 692; 3 C. B. 284, 294). No title can be founded on a forgery (*Davis v. Bank of England*, 2 Bing. 393).

Forgery.

If the company registers the transferee under a forged transfer, the real owner is entitled to have the shares re-transferred to him, and he may proceed against the company either by mandamus or by way of equitable relief, or he may claim damages (*Midland Ry. Co. v. Taylor*, 8 H. L. C. 751; *Swan v. North British Australasian Co.*, 2 H. & C. 175; *Cottam v. Eastern Counties Ry. Co.*, 1 J. & H. 243; *Johnston v. Benton*, 9 Eq. 181).

Right of
transferor
where trans-
fer forged.

It seems the company may, upon ascertaining that a purchaser has been registered upon a transfer containing a forgery, of which the purchaser has no knowledge, restore the name of the vendor to the register, though he makes no claim to the shares, or at any rate the purchaser in such a case is not a shareholder (*Hare v. L. & N. W. Ry. Co.*, fo. 722).

What negli-
gence of
transferor
destroys his
rights.

A person may be deprived of his right to insist on the invalidity of a forged transfer by negligence, but such negligence must be in the transaction itself, it must be the proximate cause of leading the party who acts on the forgery into the mistake, and it must be neglect of some duty owing to that party or the general public (*Swan v. North British Australasian Co.*, 2 H. & C. 181; *Arnold v. Cheque Bank*, 1 C. P. D. 578; *Bazendale v. Bennett*, 3 Q. B. D. 525; *Coventry v. Gt. E. Ry. Co.*, 11 Q. B. D. 776).

The following circumstances have been held not to be negligence within this rule: negligence in the custody of a seal which is thereby put to a power of attorney (*Bank of Ireland v. Evans' Charities*, 5 H. L. 389).

- 8 Vict. c. 16, s. 16.** Execution of transfers in blank to enable a broker to sell shares A. where the broker fills in shares B. (*Taylor v. Gt. Indian Peninsula Ry. Co.*, 4 De G. & J. 559; *Swan v. North British Australasian Co.*, 2 H. & C. 175; see *Donaldson v. Gillott*, 3 Eq. 274).
- A person whose shares have been transferred under a forged transfer may estop himself from setting up the forgery, if with knowledge of the facts he stands by and allows the company to act as if the transfer were valid (*Coles v. Bank of England*, 10 Ad. & E. 437; *McKenzie v. British Linen Co.*, 6 App. C. 82).
- Stamp upon joint transfer.** Where several persons jointly transfer their shares by one deed, an *ad valorem* stamp is sufficient (*Wells v. Bridge*, 4 Exch. 193).
- A transfer altered after execution by the insertion of the name of a new transferee requires a fresh stamp (*London & Brighton Ry. Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 544).
- Where a consideration greater than passed is stated the transfer is not avoided (*R. v. Mid. Counties, &c. Ry. Co.*, 15 Ir. C. L. 525).
- Shares in name of lunatic.** Notwithstanding this section, stock standing in the name of a lunatic may be ordered to be transferred in the books of the company by the secretary of the company under the Lunacy Regulation Act, 1853 (16 & 17 Vict. c. 70), s. 140 (*In re Ives*, 32 L. J. Ch. 673).
- Form of transfer.** The deed of transfer should be in the statutory form, as the company will not be bound to register a deed materially differing from that form (*R. v. General Cemetery Co.*, 6 E. & B. 415).
- Charging order.** A person who has obtained judgment against a shareholder may obtain a charging order upon the debtor's interest, vested or contingent, in any shares standing in his name in his own right, or in the name of any person in trust for him, under Order 46, 1 & 2 Vict. c. 110, ss. 14 and 15, and the company will be restrained from transferring such shares. The order when obtained operates from the date of the order *nisi* (*Italy v. Barry*, 3 Ch. 452).
- Judgment debt payable in future.** It may be obtained though the judgment debt is not payable till a future day, but it cannot be obtained for an unascertained sum, such as costs not taxed (*Younghusband v. Gisborne*, 1 De G. & Sm. 209; *Bagnall v. Charlton*, 6 Ch. D. 130; *Jones v. Williams*, 8 M. & W. 349; *Widgery v. Tepper*, 6 Ch. D. 364, overruling *Burns v. Irving*, 3 Ch. D. 291).
- Trustee having no beneficial interest.** A charging order cannot be obtained against a judgment debtor in respect of shares standing in his name as a trustee merely without any beneficial interest. If an order *nisi* is made in such a case the company may nevertheless transfer the shares (*Gill v. Continental Gas Co.*, L. R. 7 Ex. 332; *In re Blakely Ordnance Co.*, 35 L. T. N. S. 617. The case of *Cragg v. Taylor*, L. R. 1 Ex. 148, appears to be overruled).
- Equitable interest.** A debtor who has transferred shares to a trustee upon trusts for sale and payment of debts, with an ultimate trust in his own favour, has an interest which may be charged (*Cragg v. Taylor*, L. R. 2 Ex. 131).
- And the interest of the debtor in shares forming part of property held in trust for the debtor and other persons may be charged (*South Western Loan Co. v. Robertson*, 8 Q. B. D. 17).
- But a person entitled to the residue of an estate which includes shares after payment of debts and legacies has not an interest in the shares which can be charged (*Dixon v. French*, L. R. 4 Ex. 154).
- Order for sale.** An order for sale of shares upon which a judgment creditor has obtained a charging order cannot be made in the action in which the judgment was recovered (*Leggott v. Western*, 12 Q. B. D. 287. See, too, Order 55, Rule 5a).
- An order *nisi* charging shares is not affected by section 45 of the Bankruptcy Act, 1883, and the judgment creditor cannot be restrained by the trustee in the subsequent bankruptcy of the debtor from completing the order (*In re Hutchinson*, 16 Q. B. D. 516).
- Transfers of shares to be registered, &c.** 15. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "register of transfers," and shall endorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry, together with such endorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an endorsement of such transfer shall be

made on the certificate of such share, instead of a new certificate being granted; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

8 Vict.
c. 16, s. 16.

It would seem that where a properly-executed transfer of shares, accompanied by the certificates of the shares, is sent to the company, the company is not bound forthwith to register the transfer, but may take a reasonable time for inquiries (*Société Générale de Paris v. Walker*, 11 App. C. 21, 41; *Colonial Bank v. Whinney*, 11 App. C. 426).

Whether company bound to act on transfer.

Delivery to the secretary of a defective transfer does not confer a right to be registered, at any rate till the defect is remedied (*Nanney v. Morgan*, 35 Ch. D. 598).

Having regard to section 20, it seems that where notice of an equitable claim is given to the company it is effectual only for a reasonable time, and operates only as a notice to the company not to allow a transfer without giving the equitable claimant an opportunity to establish his right, per Cotton, L. J. (*Société Générale de Paris v. Tramways Union Co.*, 14 Q. B. D. 424, 448; see *Bradford Banking Co. v. Briggs*, 12 App. C. 29).

Effect of notice of equitable rights.

Registration may be compelled by mandamus (*Ward v. S. E. Ry. Co.*, 29 L. J. Q. B. 177; 2 E. & E. 812).

Mandamus to register.

A company will not be compelled to register a transfer to an infant based upon contract (*R. v. Midl. Counties, &c. Ry.*, 15 Ir. C. L. 514).

Transfer to infant; to pauper.

But a transfer to a pauper must be registered, if the transfer is *bona fide* without trust or reservation (*R. v. Midl. Counties Ry.*, 15 Ir. Ch. 525).

An action for damages lies against a company for not registering a proper deed of transfer whereby the shares have been forfeited and sold (*Catchpole v. Ambergate, &c. Ry. Co.*, 1 E. & B. 111).

Default in registering.

Where a company have once registered a person as shareholder they are not entitled to remove his name because his legal title is afterwards found to be defective (*Ward v. S. E. Ry. Co.*, 29 L. J. Q. B. 177; 2 E. & E. 812).

Removal of transferee for defect of title.

Where the undertaking has been virtually abandoned, and a portion of the subscriptions returned to shareholders, a person who has purchased shares with notice of what has taken place, and whose *bona fides* in becoming a shareholder is questionable, is not entitled to be registered (*R. v. Liverpool, &c. Ry. Co.*, 21 L. J. Q. B. 284; 16 Jur. 949).

A transfer by deed for a nominal consideration is a transfer within this section, and the transferee is not entitled to be registered without delivering the deed to the secretary (*Copeland v. N. E. Ry. Co.*, 6 E. & B. 277).

Transfer for nominal consideration.

Under section 4 of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), a company was bound to register shares in the name of a married woman unless they could show a flaw in her title (*R. v. Carnatic Ry. Co.*, L. R. 8 Q. B. 299).

Married Women's Property Act.

16. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him.

Transfer not to be made until calls paid.

The meaning of this section is that the company may refuse to execute a transfer of shares while a call is unpaid, and not merely that the transferor remains liable to the call (*R. v. Wing*, 17 Q. B. 646; S. C. nom. *Hall v. Norfolk Estuary Co.*, 21 L. J. Q. B. 94; 16 Jur. 149).

A call is made when the resolution to call is passed, and not when notice of it is given (*R. v. Londonderry and Coleraine Ry. Co.*, 13 Q. B. 998; *Ex parte Tooke*, 18 L. J. Q. B. 343).

When call made.

Upon the construction of an Act prohibiting a transfer while a call was due and payable, see *In re British Provident Life and Fire Assurance Society*, 32 L. J. Ch. 633.

To an action for the purchase-money by the vendor of shares which he offers to transfer on receiving the name of the transferee, it is no answer that a call has been made on the shares which has not been paid, as the plaintiff can place himself in a condition to make the transfer by paying the call at any time before the transfer (*Shaw v. Rowley*, 16 M. & W. 810).

8 Vict.
c. 18,
ss. 17-19.

Indemnity to
broker paying
call.

A broker employed to buy railway shares on which, after contract, the seller pays a call, may pay the call and claim it from the purchaser (*Bayley v. Wilkins*, 7 C. B. 886).

A shareholder is entitled to transfer shares on which all calls have been paid though he may be the holder of other shares on which a call has been made (*Hubbersty v. Manchester, &c. Ry. Co.*, L. R. 2 Q. B. 59, 471).

And if a transfer of shares on which a call is due has in fact been registered, the transfer is valid, and the transferor is no longer a shareholder (*In re Hoylake Ry. Co.*, 9 Ch. 257).

This section has no application to the case of a transmission of shares under section 18. See *In re Bentham Mills Spinning Co.*, 28 W. R. 26, a case under the Companies Act, 1862.

Closing of
transfer
books.

17. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting; and they may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

Transmission
of shares by
other means
than transfer
to be authen-
ticated by a
declaration.

18. If the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special Act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a master or master extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof.

Infant may be
registered.

It appears that under this section an infant may be registered (*Cork & Brandon Ry. Co. v. Cazenove*, 10 Q. B. 935; *Leeds & Thirsk Ry. Co. v. Fearnley*, 4 Ex. 27; and see section 79, which provides for the vote of a minor).

Liability of
executor
registered.

It seems that an executor who assents to the registration of his testator's shares in his own name becomes personally liable. If he does not wish to have the shares transferred into his own name a reasonable time ought to be allowed to him to find a purchaser (*Buchan's Case*, 4 App. C. 583).

Proof of
transmission
by marriage,
will, &c.

19. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the

register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

8 Vict.
c. 16, s. 20.

As to the right of a married woman to be registered under the Married Women's Property Act, 1870, see *ante*, notes to section 15.

20. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company, or if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

Company not
bound to
regard trusts.

The person registered as shareholder is liable upon the shares registered in his name, though he may be merely a trustee and registered as such (*Lumsden v. Buchanan*, 4 Macq. 950; *Muir v. City of Glasgow Bank*, 4 App. C. 337; and see the *Glasgow Bank Cases*, 4 App. C. 547).

Liability of
trustee.

If there is nothing in the deed of partnership to restrict their liability, trustees becoming partners in the company are jointly and severally liable (*Cunninghams v. City of Glasgow Bank*, 4 App. C. 607).

In the same way persons holding shares in trust for the company are personally liable to creditors (*Preston v. Grand Collier Dock Co.*, 11 Sim. 327; 2 R. C. 335; *In re Ennis & West Clare Ry. Co.*, 3 L. R. Ir. 187; *Cree v. Somervail*, 4 App. C. 648).

As to the obligation of the company under this section with regard to equitable rights, of which they have notice, see *Société Générale de Paris v. Walker*, 14 Q. B. D. 424; 11 App. C. 20; *Bradford Banking Co. v. Briggs & Co.*, 31 Ch. D. 19; 12 App. C. 29.

Notice to
company of
equities.

Where a company under the Companies Act, 1862, was by its articles entitled to a lien upon the shares of a shareholder for all debts owing by him to the company, it was held that the company's lien had priority against the shares as against *certain que trust* where the shareholder was only a trustee (*New London and Brazilian Bank v. Brocklebank*, 21 Ch. D. 302).

But the company has no priority over an equitable incumbrancer who advanced money on a deposit of the certificates with notice to the company before the debt to the company became due (*Bradford Banking Co. v. Briggs & Co.*, 31 Ch. D. 19; 12 App. C. 29. See, too, *Miles v. New Zealand Alford Estate Co.*, 32 Ch. D. 266).

A trustee of shares cannot create an equitable title in priority to the title of his *certain que trust* (*Shropshire Union, &c. Co. v. Reg.*, L. R. 7 H. L. 496).

No notice to the company is necessary to make an equitable assignment of shares effectual against judgment creditors of the shareholder (*Beavan v. Ld. Oxford*, 6 D. M. & G. 492; *Pickering v. Ilfrac. Ry. Co.*, L. R. 3 C. P. 235; *Robinson v. Nesbitt*, L. R. 3 C. P. 264; *Arden v. Arden*, 29 Ch. D. 702).

Equitable
assignment
without notice
to company.

8 Viet.
c. 16, ss. 21, 22.

As to effect of
notice on
order and
disposition.

What notice
is sufficient.

Where com-
pany are
mortgagees.

Notice to
clerk.

Where officer
of company is
mortgagor.

Mortgage by
all officers to
whom notice
could be
given.

Private know-
ledge of
director.

Payment of
calls.

Subscriptions
to be paid
when called
for.

Power to
make calls.

Since the decision of the House of Lords, that shares are choses in action (*Colonial Bank v. Whinney*, 11 App. C. 426), the cases, in which notice to the company of an equitable claim has been held to take shares out of the order and disposition of a bankrupt shareholder, are of little importance.

The principal cases on the question are cited below for convenience of reference, but it is not considered necessary to discuss them, as it is now settled that shares are not within the order and disposition clause (*Ex parte Littledale*, 6 D. M. & G. 714; *Ex parte Agra Bank*, 3 Ch. 555; *Assignees of Dunne v. Hibernian Joint-Stock Co.*, 1 R. 2 Eq. 82; *Ex parte Masterman*, 4 Dea. & C. 751; *Ex parte Lancaster Cannl Co.*, 1 Dea. & C. 411; *Nelson v. London Assurance Co.*, 2 S. & St. 292, explained in *Ex parte Littledale*, 6 D. M. & G. 714, p. 735; *Morris v. Cannan*, 31 L. J. Ch. 425).

It will be remembered, that a notice to the company to be effectual must be given either to the company through its proper officers, or it must be received by the company in the course of the transaction of its business (*Société Générale de Paris v. Tramways Union Co.*, 14 Q. B. D. 424; 11 App. C. 20).

Thus notice to the secretary of a company is sufficient (*Ex parte Stright*, 1 Mont. 502).

If the company are the mortgagees the transaction necessarily imports notice to the company (*Assignees of Dunne v. Hibernian Joint-Stock Bank*, 1 R. 2 Eq. 82).

But a mere casual mention of an assignment to a person who is a clerk in the company is not notice to the company (*Ex parte Carbis*, 4 D. & C. 351; 1 Mont. & Ayr. 693, n.; *Société Générale de Paris v. Tramways Union Co.*, 14 Q. B. D. 424).

The fact that the person creating a lien on shares is a secretary or officer of the company is not in itself a sufficient notice to the company (*Ex parte Boulton*, 1 De G. & J. 163, which appears to overrule *Ex parte Waithman*, 4 Dea. & Ch. 412, where the mortgagor being a director and the mortgagee an auditor of the company, the company was held to have notice; and see *Ex parte Hennessy*, 1 C. & L. 559).

But if the equitable deposit is made by all the officers of the company so that there is no one to whom additional notice can be given, the company has sufficient notice (*Ex parte Stewart*, 4 D. J. & S. 543).

The fact that a director and actuary of the company happen to have private notice of a trust is not notice to the company (*Ex parte Watkins*; *In re Kidder*, 2 Mont. & Ayr. 348. See *Ex parte Harrison*, 3 Mont. & Ayr. 506).

And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows :

21. The several persons who have subscribed any money towards the undertaking, or their legal representatives, respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special Act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

22. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days' notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held

by him, to the persons and at the times and places from time to time appointed by the company.

8 Vict.
c. 16, ss. 23, 24.

The equitable mortgagee of shares not standing in his name cannot be made liable to pay the call (*Newry, &c. Ry. Co. v. Moss*, 14 Beav. 64).

Equitable mortgagee.

The company in this section does not mean a general meeting of the company. Thus, directors may make calls without the authority of a general meeting (*Ambergate Ry. Co. v. Mitchell*, 6 R. C. 235. See *Wills v. Murray*, 4 Ex. 843; a case decided upon a deed of settlement).

Directors may make calls.

The subscription of the prescribed capital is not a condition precedent to the making of calls, though, of course, the special Act may by apt words make it so (*In re Jennings*, 1 Ir. Ch. 654. See *Waterford, &c. Co. v. Dalbiac*, 20 L. J. Ex. 227; 6 R. C. 753; 6 Ex. 443; *Norwich, &c. Co. v. Theobald*, 1 M. & M. 151. See *Stratford, &c. Co. v. Stratton*, 2 B. & Ad. 518).

Calls made before capital subscribed.

When the special Act directs calls to be made at intervals, calls made at one time are invalid (*Stratford, &c. Co. v. Stratton*, 2 B. & Ad. 518).

Calls to be made at intervals.

A resolution that a call "shall be made" on a future day is good, and the time, place, and manner of payment may be fixed by a distinct act after the original resolution (*Sheffield, Ashton-under-Lyne, &c. Ry. Co. v. Woodcock*, 2 R. C. 522; 7 M. & W. 574).

How a call may be made.

The time and place of the call and the person to whom it is payable may be specified by advertisement (*Gt. North of Engl. Ry. Co. v. Biddulph*, 7 M. & W. 243).

It would seem that the time for payment of the call cannot be fixed by a mere verbal direction to the secretary of the company (*Johnson v. Lyttle's Iron Agency*, 5 Ch. D. 687, a case under the Companies Act, 1862).

Calls payable by instalments are valid (*L. & N. W. Ry. Co. v. M'Michael*, 20 L. J. Ex. 227; 6 R. C. 495; 6 Ex. 273; *Birkenhead, &c. Ry. Co. v. Webster*, 20 L. J. Ex. 234; *Ambergate Ry. Co. v. Norcliffe*, 20 L. J. Ex. 234; 6 Ex. 629; *In re Jennings*, 1 Ir. Ch. 654).

Calls payable by instalments.

Debt will not lie till all the instalments are payable (*Ambergate, &c. Co. v. Coulthard*, 5 Ex. 459).

Where calls are payable by instalments the day upon which the last instalment is payable is the day on which the call is payable, and twenty-one days' notice previous thereto is a good notice (*In re Jennings*, 1 Ir. Ch. 654).

When call payable.

The words providing that successive calls be not made at less than the prescribed interval probably refer to the time of payment (*Ambergate Ry. Co. v. Mitchell*, 6 R. C. 235).

If the aggregate amount of calls made in one year exceed the prescribed amount, this is a good answer to an action for a call, and if the directors rely on the fact that a prior call is void, they must prove it or show that it has not been paid (*Welland Ry. Co. v. Berrie*, 6 H. & N. 416).

An agreement to set off calls due from a shareholder against goods supplied by him would seem to be *ultra vires* (*Pollatt's Case*, 2 Ch. 527).

Set-off.

In proving for calls the company must sell the shares and prove for the difference (*In re Jennings*, 1 Ir. Ch. 654. See *Waterford, &c. Ry. Co. v. Dalbiac*, 20 L. J. Ex. 227).

Proof for calls.

23. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

Interest to be paid on calls unpaid.

24. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the principal monies so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of

Power to allow interest on payment of subscriptions before call.

§ Vict.
c. 16,
ss. 25-27.

Enforcement
of calls by
action.

interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

25. If at the time appointed by the company for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest from the day on which such call was payable.

See *ante*, notes to section 22.

The power of suing for calls under this section, and of declaring shares forfeited under section 29, is cumulative (*Gt. N. Ry. Co. v. Kennedy*, 6 R. C. 5; 4 Ex. 417).

Declaration
in action for
calls.

26. In any action or suit to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special Act.

The words "is the holder" refer to the time at which the call was made (*Belfast & County Down Ry. v. Strange*, 1 Ex. 739; 5 R. C. 548).

Executors of a shareholder, on whom a call has been made in his lifetime, cannot be sued in the statutory form (*Birkenhead, &c. Co. v. Cotesworth*, 6 R. C. 211).

An action for calls under this section will not lie against a person who is not shown to be the holder of some specific shares (*Wolverhampton New Waterworks Co. v. Hawkenford*, 6 C. B. N. S. 336; 7 *ib.* 795; 11 *ib.* 456; 28 L. J. C. P. 242; 29 *ib.* 121; 31 *ib.* 184).

The liability to calls is created by statute, and the period of limitation is therefore twenty years (*Cork & Bandon Ry. Co. v. Goode*, 22 L. J. C. P. 193; 13 C. B. 826).

A special claim for interest is not necessary in an action under this section, but the amount claimed should cover the interest (*Southampton Dock Co. v. Richards*, 1 M. & G. 448; *London & Brighton Co. v. Fairclough*, 2 M. & G. 674).

The section gives a form of declaration or statement of claim (*Wilson v. Birkenhead, &c. Co.*, 6 Ex. 626).

Plea of
infancy.

It is no answer to an action for calls that the shareholder was an infant at the time when he was registered, if nothing more is alleged (*Cork & Bandon Ry. Co. v. Cazenove*, 10 Q. B. 935; *Leeds & Thirsk Ry. Co. v. Fearnley*, 4 Ex. 26; *L. & N. W. Ry. Co. v. M^cMichael*, 20 L. J. Ex. 97; 5 Ex. 114).

The plea of infancy should allege repudiation within a reasonable time of coming of age (*Dublin, &c. Ry. Co. v. Black*, 22 L. J. Ex. 94; 8 Ex. 181).

A person who allows shares to remain in his name after he attains his majority, ratifies his liability to the company (*Cork, &c. Co. v. Cazenove*, 10 Q. B. 935).

It is an answer to an action for calls, that the defendant became shareholder by contract while an infant, and that while he was an infant he repudiated the shares (*Neury & Enniskillen Ry. Co. v. Coombe*, 3 Ex. 565).

Matter to be
proved in
action for
calls.

27. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special Act; and it shall not be necessary to prove the appointment of the directors who made such

call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

8 Vict.
c. 16,
ss. 28-30.

A promise to pay a call is evidence that proper notice of it has been given, but if the notice is shown to be insufficient, it is not cured by a promise to pay (*Miles v. Bough*, 3 R. C. 668; 3 Q. B. 845).

Promise to pay call is evidence of notice.

A list drawn up by a proper officer of the shareholders to whom notices of a call have been posted, is evidence of notice (*Eastern Union Ry. Co. v. Symonds*, 6 R. C. 578. See, too, *Trotter v. Maclean*, 13 Ch. D. 574; 28 W. R. 224; *Reid v. Harvey*, 5 Q. B. D. 184).

28. The production of the register of shareholders shall be *prima facie* evidence of such defendant being a shareholder, and of the number and amount of his shares.

Proof of proprietorship.

The register under this section, means the sealed register referred to in section 9 (*Birkenhead, &c. Ry. Co. v. Brownrigg*, 4 Ex. 426).

To make the register evidence under this section, the requirements of section 9 must be at least substantially complied with (see section 9) (*Bain v. Whitehaven Ry. Co.*, 3 H. L. 1).

Section 9 must be substantially complied with.

It is, however, immaterial that the register is described as "register of proprietors," or that a gross amount only is entered as paid upon the shares, the portion applicable to each share not being distinguished (*Bain v. Whitehaven Ry. Co.*, 3 H. L. 1).

When the register consists of several volumes, it is sufficiently authenticated by sealing at the end of the last (*Inglis v. G. N. Ry. Co.*, 16 Jur. 895; 1 M. Q. 112).

And it need not be proved that the seal was affixed at a meeting of the company (*L. & N. W. Ry. Co. v. M'Michael*, 20 L. J. Ex. 6; 5 Ex. 855).

So, too, errors in the register not relating to the matter in dispute are immaterial (*Southampton Docks Co. v. Richards*, 2 R. C. 215; 1 M. & Gr. 448, 461; *London Grand Junction Ry. Co. v. Freeman*, 2 R. C. 468; 2 M. & Gr. 606).

The register is of course not *prima facie* evidence against a person whose name does not appear in it, though shares may be described in it as standing in the name of "A. and others," where A. is one of his co-trustees (*Birkenhead, &c. Ry. Co. v. Brownrigg*, 4 Ex. 426).

A mere informal document not appearing to have been intended as a register, cannot be received as a register under this section (*Wolverhampton New Waterworks Co. v. Hauckesford*, 7 C. B. N. S. 795; 29 L. J. C. P. 121. See 11 C. B. N. S. 546; 31 L. J. C. P. 184).

Non-payment of calls.

And with respect to the forfeiture of shares for non-payment of calls, be it enacted as follows:

Forfeiture of shares for non-payment of calls. [The Companies Clauses Act, 1863 (26 & 27 Vict. c. 118, s. 3 *et seq.*), contains provisions for cancellation of forfeited shares and for surrender of shares.] Notice of forfeiture to

29. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

See notes to section 35, *post*, and see note to section 22, *ante*.

30. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to

8 Vict. c. 18,
ss. 31-33.

be given be-
fore declara-
tion thereof.

the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders' address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as herein-before mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the *London* or *Dublin Gazette*, according as the company's principal place of business shall be situate in England or Ireland, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

See notes to section 35, *post*.

Forfeiture to
be confirmed
by a general
meeting.

31. The said declaration of forfeiture shall not take effect so as to authorize the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting and by an order at such meeting, or at any subsequent general meeting, to direct the shares so forfeited to be sold or otherwise disposed of.

See notes to section 35, *post*.

Sale of for-
feited shares.

32. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

See notes to section 35, *post*.

Evidence as
to forfeiture
of shares.

33. A declaration in writing by some credible person not interested in the matter, made before any justice or before any master or master extraordinary of the High Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner herein-before required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such

purchase; and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

8 Vict. c. 16,
ss. 34—36.

See notes to section 35, *post*.

34. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

No more shares to be sold than sufficient for payment of calls.

See notes to section 35, *post*.

35. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

On payment of calls before sale the forfeited shares to revert.

The right to forfeit shares and the right of action for calls are cumulative and not alternative remedies (*G. N. R. v. Kennedy*, 4 Ex. 417; *Inglis v. G. N. R.*, 1 M.Q. 112; 16 Jur. 895).

Directors will not be compelled to perform a contract made with a shareholder to forfeit his shares, the power to forfeit being vested in them for the benefit of the company, and not of individual shareholders (*Harris v. N. Devon Ry. Co.*, 20 B. 384; see too *Price v. Denbigh, Ruthin, & Corwen Ry. Co.*, 38 L. J. Ch. 461).

Agreement to forfeit.

A shareholder is not entitled to be relieved from a forfeiture properly declared in pursuance of the statutory provisions (*Sparks v. Company of the Proprietors of the Liverpool Waterworks*, 13 Ves. 428; *Naylor v. S. Devon Ry. Co.*, 1 De G. & Sm. 32; see *Sudlow v. Dutch Rhenish Ry. Co.*, 21 B. 43).

Relief against forfeiture.

To entitle the directors to forfeit the shares, the requirements of the statute must be strictly followed. If, therefore, the notice to the shareholder claims interest from the date of the call instead of from the day fixed for its payment, a subsequent forfeiture is invalid (*Johnson v. Lyttle's Iron Agency*, 5 Ch. D. 687).

Forfeiture clauses strictly construed.

So a declaration of forfeiture of which notice is given to the shareholder, is no answer to an action for calls, if the declaration has not been confirmed by a general meeting in accordance with section 31 (*London & Brighton Ry. Co. v. Fairclough*, 3 Sc. N. R. 68; 2 M. & Gr. 674; 2 R. C. 544).

It would seem that notice of the intention to forfeit having been given, no further notice that the shares have been forfeited is necessary (see *In re North Hallenbeagle, &c. Co.*, 36 L. J. Ch. 317).

And the shareholder's name need not be removed from the register (*In re Tavistock Ironworks, &c. Co.*, 36 L. J. Ch. 616).

Directors who forfeit shares are bound, if they do not sell them, to credit the shareholders with the highest market price without any allowance for the effect upon the market of offering a large number of shares for sale (*Stubbs v. Lister*, 1 Y. & C. Ch. 81).

Remedies against shareholders.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows:

Execution

36. If any execution, either at law or in equity, shall have been

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§ Vict. c. 16,
s. 37.

against
shareholders
to the extent
of their shares
in capital not
paid up.

[* Rolling
stock is pro-
tected from
execution by
30 & 31 Vict.
c. 127, s. 4,
made per-
petual by
38 & 39 Vict.
c. 31.]

issued against the property* or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up; Provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the persons sought to be charged; and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

See notes to the next section.

Reimburse-
ment of such
shareholders.

37. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

Rights of
creditors of
company.

The general creditors of the company may obtain judgment and issue execution against the company, but a judgment creditor who issues execution or sues out an elegit, takes subject to the rights of mortgagees (if any), and subject to the right of the company to work and manage the undertaking for the necessary purposes of their Act (*Potts v. Warwick, &c. Canal Navigation Co.*, Kay, 142; *Whitworth v. Gaugain*, 3 H. 416; *Ames v. Trustees of Birkenhead Docks*, 20 B. 332; *Bowen v. Brecon Ry. Co.*, 3 Eq. p. 548).

Where one company undertakes to work the line of a second company, receiving the tolls, and paying over the surplus, a debenture mortgagee of the tolls of the second company cannot intervene to prevent a judgment creditor of the second company from attaching a sum acknowledged by the first company to be due to the second company, the amount having ceased to be tolls and become a mere debt (*Swiney v. Enniskillen, Bundoran, & Sligo Ry. Co.*, 1 R. 2 C. L. 338).

Judgment
creditor
entitled to
receiver of
tolls.

Where there are no prior incumbrancers on the undertaking, a judgment creditor to whom the land of the company has been delivered under an elegit, but who has done nothing further, is entitled to a receiver of the tolls and earnings as part of the profits of the land, and is not accountable as if he were mortgagee in possession (*Kington v. Cowbridge Ry. Co.*, 41 L. J. Ch. 152).

Rolling stock
protected.

The rolling stock is protected from execution after the railway or any part thereof is open for traffic by the Railway Companies Act, 1867 (30 & 31 Vict. c. 127, s. 4, made perpetual by 38 & 39 Vict. c. 31), and a person who has recovered execution may obtain the appointment of a receiver, and, if necessary, of a manager, on application by petition. See notes to that Act, *post*.

Receiver in
possession.

Where a receiver is in possession, an execution creditor cannot levy without the leave of the Court (*Russell v. East Anglian Ry. Co.*, 6 R. C. 501; 3 M. & G. 104).

Where a receiver has been appointed in an action, persons not parties to the action cannot proceed by summons to procure payment from the receiver of sums due to them for working expenses (*Brocklebank v. East London Ry. Co.*, 48 L. J. Ch. 729).

Priority of
judgment
creditors.

A judgment creditor has, under "The Law of Judgments Amendment Act," 27 & 28 Vict. c. 112, no charge upon the land until it has been delivered in execution by virtue of a writ of elegit or other lawful authority, and the priorities of judgment creditors are determined, not by the date of their judgments, but by the date at which the writs issued upon their judgments are placed in the hands of the sheriff (*Guest v. Cowbridge Ry. Co.*, 6 Eq. 619).

Inquiry as to
superfluous
lands.

Where an execution creditor sues out an elegit, and presents a petition for sale under 27 & 28 Vict. c. 112, s. 4, an inquiry will be directed, whether any of the lands extended are superfluous lands (*In re Bishop's Wallham Ry. Co.*, 2 Ch. 382; *Gardner v. L. Ch. & D. Ry. Co.*, *Ex parte Griesell*, *ibid.* 385).

But in a proper case, where it is clear what surplus lands there are, a sale may be directed without an inquiry (*In re Calne Ry. Co.*, 9 Eq. 658).

The creditor is entitled to a sale of surplus lands, though they may have been acquired under an extension Act, empowering the issue of shares for the purpose of additional works, and declaring that the new works shall for financial purposes form a separate undertaking, and though the debt may have been incurred on account of the original line (*In re Ogilvie*, 7 Ch. 174). 8 Vict. c. 16, s. 37.

Where the interest in the land is equitable, the creditor must proceed to procure equitable execution, which may be done before the return of the sheriff (*In re Courbridge Ry. Co.*, 5 Eq. 413; *Halton v. Haywood*, 9 Ch. 229). Equitable execution.

The issue of an elegit is not in such a case necessary to complete the creditor's security.

Thus it has been held that the appointment of a receiver in an action by a judgment creditor is, as regards property which can only be affected in equity, a delivery in execution by lawful authority within the statute (*Ex parte Evans, In re Watkins*, 27 W. R. 712; 11 Ch. D. 691; 13 Ch. D. 252). Appointment of receiver.

A judgment creditor can obtain equitable execution by motion in the action in which he recovered judgment (*Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; *Salt v. Cooper*, 16 Ch. D. 544). How judgment creditor should proceed.

The judgment creditor may redeem prior incumbrancers, and obtain a decree for foreclosure by one proceeding (*Beckett v. Buckley*, 17 Eq. 435).

But he is not bound to redeem, and he may obtain a decree for the appointment of a receiver and a sale in an action without making prior incumbrancers parties (*Wells v. Kilpin*, 18 Eq. 298).

A receiver may be appointed on an interlocutory application (*Anglo-Italian Bank v. Davies*, 9 Ch. D. 275).

It seems the word shareholder in sect. 37 includes any person who is a shareholder within the definition in sect. 3, though he may hold no specific shares and may not be registered as a shareholder. At any rate, this is clearly the case where the person in question is a director whose duty it was to cause numbered shares to be appropriated to himself, and to cause himself to be registered (*Portal v. Emmens*, 1 C. P. D. 201, 664). Shareholder.

A creditor is entitled to an order or a mandamus to inspect the register with a view to proceedings under this section (*Meador v. Isle of Wight Ferry Co.*, 9 W. R. 750; *R. v. Derbyshire, &c. Ry.*, 3 E. & B. 784). Creditor may inspect.

A person who has obtained judgment is not deprived of his remedy under this section, though the judgment roll may disclose that he sued as assignee of a chose in action not assignable at law (*Williams v. Sidmouth Ry. Co.*, L. R. 2 Ex. 284). Judgment roll conclusive.

Execution against a shareholder upon a judgment recorded against the company may now issue by the leave of the court or a judge under Order 42, Rule 23. Execution against shareholder on judgment against company.

Section 36 does not require, and in Chancery it was not the practice to direct the issue of a *scire facias* (*Healey v. Chichester, &c. Ry. Co.*, 9 Eq. 143).

Even at common law execution could issue without a *scire facias* if the shareholder consented (*Burke v. Dublin, &c. Ry. Co.*, L. R. 2 Q. B. 47, and see *Devereux v. Kilkenny, &c. Ry. Co.*, 5 Ex. 834).

But the usual mode of proceeding against a person not a party to the record was by motion for a *scire facias* (*Hitchens v. Kilkenny Ry. Co.*, 10 C. B. 160).

Order 42, Rule 23, probably supersedes the provision of section 36 requiring a "motion in open court," and also the procedure by *scire facias*.

It may, however, be useful shortly to refer to the cases on the old practice, which may, in incidental matters, be authorities for the new practice.

For the issue of a writ of *sci. fa.* it was sufficient to raise a *prima facie* case that a person was a shareholder (*Rastrick v. Derbyshire, &c. Ry. Co.*, 9 Ex. 149). *Prima facie* case.

But the mere fact that a person had paid a deposit was not sufficient evidence that he was a shareholder (*Edwards v. Kilkenny, &c. Ry. Co.*, 14 C. B. N. S. 526).

Before a *sci. fa.* could issue, it was necessary to show that execution had issued against the property of the company, and that there was not found sufficient whereon to levy. Execution must have issued.

The *sci. fa.* stated these facts, and also that the person against whom execution was to issue was a shareholder who had not paid up his shares, and the amount paid on each share. All the facts were traversable (*Devereux v. Kilkenny Ry. Co.*, 5 Ex. 834).

It was not necessary that the sheriff's return of *nulla bona* should be actually filed at the time of the motion for a writ of *sci. fa.* (*Ilfracombe Ry. Co. v. Devon, &c. Ry. Co.*, L. R. 2 C. P. 15). Sheriff's return.

The court had, under this section, a discretion as to whether a *sci. fa.* should issue or not (*Scott v. Uxbridge, &c. Ry. Co.*, L. R. 1 C. P. 696; *Shrimpton v. Sidmouth Ry.*, L. R. 2 C. P. 80). *Sci. fa.* discretionary.

Thus, where the sum claimed included costs incurred since the judgment, which the creditor was not entitled to recover, and the shareholder offered to pay the whole

8 Vict. c. 16,
s. 37.

under protest as regards the over-payment, the court refused a *sci. fa.* (*Scott v. Uxbridge, &c. Ry. Co.*, L. R. 1 C. P. 596).

An affidavit of the sheriff's officer would appear to be necessary to show what was done under the writ of *fi. fa.* which has been returned *nulla bona*; but this is unnecessary where there is an affidavit that the company has no property whatever (*Hitchins v. Kilkenny Ry. Co.*, 10 C. B. 160; *Nixon v. Kilkenny Ry. Co.*, 1 H. & N. 47; *Wyatt v. Darent Valley Ry. Co.*, 2 C. B. N. S. 111; *Rastrick v. Derbyshire, &c. Co.*, 9 Ex. 149).

Where the person against whom a *sci. fa.* was asked for was a director, who had stated at a meeting, that the company had no funds to meet the claims of creditors, this was sufficient evidence that there was no property against which execution could issue (*Devereux v. Kilkenny Ry. Co.*, 5 Ex. 831).

Shareholder
cannot plead
set-off.

A *sci. fa.* was granted though the shareholder alleged that the company was indebted to him to a greater amount than that of his unpaid calls (*Wyatt v. Darent Valley Ry. Co.*, 2 C. B. N. S. 114).

The fact that lands of the company have been delivered to the creditor under an *elegit* does not bar his remedy against individual shareholders under the section where the proceeds of the *elegit* are insufficient (*R. v. Derbyshire, &c. Ry.*, 3 E. & B. 784; *Addison v. Tate*, 11 Ex. 251).

Where anything has been received under the *elegit*, the *sci. fa.* was issued only for the residue (*Addison v. Tate, supra*).

Where lands of the company had been delivered to a creditor under an *elegit*, and the debt might be satisfied out of the future rents, the court exercised its discretion in permitting the *sci. fa.* to have execution to issue or not (*Addison v. Tate*, 11 Ex. 250).

The existence of funds which may ultimately become available for the payment of debts under the Winding-up Act, but which are not immediately available in satisfaction of a judgment, will not deprive a creditor of his remedy against the shareholders (*Mackenzie v. Sligo Ry. Co.*, 4 E. & B. 119).

Personal
service.

It was necessary that notice to the party sought to be charged should be served personally, but the rule *nisi* for the *sci. fa.* could be served on an attorney authorized to accept service for him (*Ilfracombe Ry. v. Devon, &c. Ry.*, L. R. 2 C. P. 15; *Edwards v. Kilkenny Ry. Co.*, 1 C. B. N. S. 409).

Executions
against
several share-
holders.

Separate executions may issue against different shareholders till the debt is satisfied (*Nixon v. Brownlow*, 1 H. & N. 405).

Payment of
sum due on
shares.

A creditor was held entitled to have rules absolute for writs of *sci. fa.* to the amount of his debt (*Rigby v. Dublin, &c. Co.*, L. R. 2 C. P. 586).

It was an answer to an application for a *sci. fa.* that since the rule was obtained the shareholder had paid another creditor, who had obtained a *sci. fa.* against him, the full amount due on his shares, though no execution had been issued (*Burke v. Dublin, &c. Ry. Co.*, L. R. 2 Q. B. 47).

But it was no answer that an order for execution had issued on the application of another creditor if the shareholder had not paid anything under the execution (*Rigby v. Dublin, &c. Co.*, L. R. 2 C. P. 286).

Where a creditor had obtained rules against several shareholders, and had received satisfaction from some of them, the rules against the others were dismissed without costs (*Burke v. Dublin, &c. Ry. Co.*, L. R. 2 Q. B. 47).

The existence of assets of the company against which execution had not been levied, but which were wholly inadequate to satisfy the debt, did not prevent a *sci. fa.* from issuing (*Ilfracombe Ry. Co. v. Pollimore*, L. R. 3 C. P. 289).

A creditor who has requested a person to become a shareholder as trustee for third persons on the representation that he would incur no liability, is not prevented from pursuing his remedy under this section against the shareholder in respect of a subsequent debt (*Bill v. Richards*, 2 H. & N. 311).

Judgment
obtained by
fraud.

A writ of *sci. fa.* was allowed to issue though the shareholder suggested that the judgment against the company was obtained by fraud; but the suggestion, if proved, would be an answer on the *sci. fa.* (*Edwards v. Kilkenny Ry. Co.*, 2 C. B. N. S. 397).

In the same way, a suggestion that the Act of Parliament incorporating the company was obtained by the fraud of the creditor was no answer to an application for a *sci. fa.* (*Lee v. Bude, &c. Ry. Co.*, L. R. 6 C. P. 576).

Where shareholders brought an action against the company, claiming to have the liability on their shares reduced, creditors who had been collusively allowed by the company to sign judgment and issue execution were not permitted to enforce their remedies by *sci. fa.* against the shareholders, plaintiffs in the action (*Horn v. Kilkenny Ry. Co.*, 1 K. & J. 399).

In the absence of collusion it was no answer to a *sci. fa.* that the company allowed judgment to go by default, though there was a good defence to the action (*Green v. Nixon*, 23 B. 530).

No transfer made after a return of *nulla bona* can relieve a shareholder (*Nixon v. Green*, 11 Ex. 550; *Nixon v. Brownlow*, 2 H. & N. 455; 3 H. & N. 686). 8 Vict. c. 18, s. 38.

After publication in the *Gazette* of notice of the filing of a scheme of arrangement under the Railway Companies Act, 1867, a creditor could issue execution against a shareholder of the company upon a *scil. fa.* only by the leave of the court (*In re Devon, &c. Ry. Co.*, 6 Eq. 610). Transfer after sheriff's return.

A guarantee fund for payment of a dividend upon the capital of a company may be so appropriated as not to be applicable to payment of debts (*In re South Lianharran Colliery Co.*, 12 Ch. D. 503; *Bouch v. Sevenoaks, &c. Co.*, 4 Ex. D. 133; *In re Stuart's Trusts*, 4 Ch. D. 213; *In re Waterford, &c. Ry. Co.*, 5 L. R. Ir. 584).

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows:

38. If the company be authorized by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to borrow money.

Power to borrow money.

A company incorporated by statute can borrow money only within the limits and in the manner authorized by statute (see 7 & 8 Vict. c. 18, s. 19, *ante*; *Baroness Wenlock v. River Dee Co.*, 10 App. C. 354).

Borrowing powers of companies.

Such a company cannot therefore, without express powers, issue bills of exchange (*Bateman v. Mid Wales Ry. Co.*, L. R. 1 C. P. 499).

Bills of exchange.

Nor can it without power borrow money by the issue of Lloyd's bonds (*Chambers v. Milford & Manchester Ry. Co.*, 5 B. & S. 588; *Fountains v. Carmarthen Ry. Co.*, 5 Eq. 316).

Lloyd's bonds.

If the company overdraws its account with its bankers, this is in effect borrowing; if, therefore, there is no power to borrow, it is equally *ultra vires* to overdraw the banking account (*Blackburn Building Society v. Cunliffe, Brooks & Co.*, 22 Ch. D. 61; 9 App. C. 857).

Banker's overdraft.

A sale by a railway company of its rolling stock for 30,000*l.*, and a contemporaneous hire of the same stock at a rent which would repay the 30,000*l.* in five years, with a provision for re-purchase of the rolling stock at the end of that time for a nominal price, is a valid transaction, and cannot be impeached on the ground that it is a loan (*Yorkshire Railway Wagon Co. v. Maclure*, 21 Ch. D. 309; see *North Central Wagon Co. v. Manchester, &c. Ry. Co.*, 35 Ch. D. 191).

Sale and hire not a borrowing.

A company can, however, incur debts in the ordinary course of its business.

Debts incurred in course of business.

And if there are valid subsisting debts the company can acknowledge its indebtedness by issuing Lloyd's bonds for the amount (*White v. Carmarthen Ry. Co.*, 1 H. & M. 786; *Fountains v. Carmarthen Ry. Co.*, 5 Eq. 316, 325).

It can also assign a call made but not payable, and give a specific charge on money to arise from the sale of surplus lands as a security for a valid existing debt (*Pickering v. Ilfracombe Ry. Co.*, L. R. 3 C. P. 235; *Gardner v. L. C. & D. Ry. Co.*, 2 Ch. 201. See, however, *Landowners, &c. Co. v. Ashford*, 16 Ch. D. 411, p. 437).

Security for valid debts.

And an assignment of rolling stock under similar circumstances may be valid (*Blackmore v. Yates*, L. R. 2 Ex. 225).

Further, a person who lends money to a company for the purpose of paying debts of the company, whether existing or subsequently incurred, has a valid claim against the company to the extent to which his loan has been so applied (*In re Cork & Youghal Ry. Co.*, 4 Ch. 748; *Re German Mining Co.*, 4 D. M. & G. 19; *Corry v. Londonderry, &c. Co.*, 29 B. 263; *Troup's Case*, 29 B. 353; *Ulster Ry. Co. v. Banbridge, &c. Ry. Co.*, 1 R. 2 Eq. 190; *Blackburn Building Society v. Cunliffe, Brooks & Co.*, 22 Ch. D. 61; 9 App. C. 857; *Baroness Wenlock v. River Dee Co.*, 19 Q. B. D. 155. See *In re National Permanent Benefit Building Society*; *Ex parte Williamson*, 5 Ch. 309).

Loans to pay valid debts.

The burden of showing that the loan has been applied in payment of debts lies upon the claimant (*Blackburn Building Society v. Cunliffe, Brooks & Co.*, 22 Ch. D. 61; 9 App. C. 857).

And where there is a running account between the debtor and creditor the

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s. 38.

creditor cannot appropriate payments in accordance with the rule in *Clayton's Case*, (*ibid.*).

Sureties for a
void loan.

Sureties for a loan to a company cannot escape liability on the ground that the loan was *ultra vires* (*Yorkshire Railway Wagon Co. v. Maclure*, 19 Ch. D. 478; rev. on another point, 21 Ch. D. 309).

Liability of
directors for
invalid loan.

Where a company borrows money *ultra vires*, the directors of the company by whose authority the money is borrowed are personally liable as upon a warranty of authority to borrow (*Richardson v. Williamson*, L. R. 6 Q. B. 276; *Weeks v. Propert*, L. R. 8 C. P. 427; *Chapleo v. Brunswick Building Society*, 6 Q. B. D. 696; *Firbank's Executors v. Humphreys*, 18 Q. B. D. 54. See *Rashdell v. Ford*, 2 Eq. 750, which may have been decided on the ground that the remedy was wrongly sought in Chancery. See, too, notes to sect. 11, *ante*).

So directors who accept a bill of exchange on behalf of a company are liable if the company has no power to accept bills (*West London Commercial Bank v. Kitson*, 13 Q. B. D. 360).

As to the measure of damages for breach of warranty of authority, see *In re National Coffee Palace Co.*, 24 Ch. D. 367; *Firbank's Executors v. Humphreys*, 18 Q. B. D. 54.

Whether
consent of
general
meeting
necessary.

The provision requiring the authority of a general meeting of the company to a loan is directory only, and does not invalidate securities issued without such authority, even in the hands of the original allottee, if he has no notice of any irregularity (*Fountain v. Carmarthen Ry. Co.*, 5 Eq. 316; *Landowners, &c. Co. v. Ashford*, 16 Ch. D. 411; *In re Romford Canal*, 24 Ch. D. 85. See, too, the notes to sect. 97, *post*).

Debentures
when issued.

As to what amounts to an issue of the debentures of a company, see *Mowatt v. Castle Steel & Iron Works Co.*, 34 Ch. D. 58.

The Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), ss. 22—35, contains provisions with regard to the creation and issue of debenture stock.

It seems that a prohibition against borrowing on mortgage or bond before a certain amount of capital is paid would not extend to money borrowed not secured by mortgage or bond (*Novell v. Andover, &c. Ry. Co.*, 3 Giff. 112).

Debentures
issued by way
of discount.

A power to borrow on debentures will not justify an agreement to give debentures by way of discount (*West Cornwall Ry. Co. v. Mowatt*, 17 L. J. Ch. 366).

But debentures authorized to be issued may be deposited as security for a loan, and will rank *pari passu* with the other debentures (*In re Regent's Canal Ironworks Co.*, 3 Ch. D. 43).

Debentures
issued at a
discount.

It has been held in cases under the Companies Acts that debentures may be issued at a discount (*In re Anglo-Danubian, &c. Colliery Co.*, 20 Eq. 339; *In re Compagnie Générale de Bellegarde*, 4 Ch. D. 470).

By section 23 of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), applicable only to railway companies, all money borrowed on mortgage or bond or debenture stock under the provisions of any Act authorizing the borrowing thereof has priority against the company and the property from time to time of the company over all other claims on account of any debts incurred or engagements entered into by them after the passing of that Act.

Before the passing of this Act it was held that a debenture holder who obtained judgment and issued execution would not be allowed to levy upon property not charged by the debentures except as trustee for all the other debenture holders of the same issue (*Bowen v. Brecon Ry. Co.*, 3 Eq. 541; but see *In re Potteries, Shrewsbury & N. Wales Ry. Co.*, 5 Ch. 67, where some doubt was thrown upon this decision. See, too, *Hope v. Croydon & Norwood Tramways Co.*, 34 Ch. D. 730).

Since the above-mentioned statute giving holders of mortgages, bonds, or debenture stock priority over all other creditors, the cases which have been decided upon the effect of particular forms of mortgages and the specific property charged by them would seem to be of importance only as regards the priorities of holders of different kinds of railway securities, *inter se*. They may be briefly mentioned here.

Bond and
mortgage.

A bond purports to bind only the company and its successors; an instrument purporting to bind the estate and effects of the company would appear to be *prima facie* something more than a bond, and to create a specific charge upon the undertaking (*In re Florence Land, &c. Co.*, 10 Ch. D. 530).

Mortgage of
undertaking.

A mortgage of the undertaking passes the rails, stations, works, and other buildings (*Legg v. Mathieson*, 2 Giff. 71; see *Wickham v. New Brunswick, &c. Ry. Co.*, L. R. 1 P. O. 64).

Such a mortgage does not pass stock or property (a) belonging to the company as common carriers, nor the soil (b) of the railway, nor surplus lands (c), nor future calls (d) ((a) *Hart v. Eastern Union Ry. Co.*, 7 Ex. 246; (b) *Doe d. Myatt v. St. Helen's Ry. Co.*, 2 Q. B. 364; (c) *Gardner v. L. C. & D. Ry. Co.*, 2 Ch. 201; *Ex parte Stanley*, 33 L. J. Ch. 536; *King v. Marshall*, 33 B. 565; see too *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681).

A mortgage of the present and future property of the company would, it seems, be valid so as to charge after-acquired property (*In re General South American Co.*, 2 Ch. D. 337; *In re Panama, &c. Mail Co.*, 5 Ch. 318; see *Willink v. Andrews*, 16 Ir. C. L. 201). 8 Vict. c. 16, ss. 39, 40.

A mortgage of the "undertaking" means the undertaking as a going concern, and the management cannot be interfered with by the mortgagees (*Gardner v. L. C. & D. Ry. Co.*, 2 Ch. 201). Meaning of undertaking.

Thus, the holder of mortgage debentures is not entitled to foreclosure or sale (*Furness v. Caterham Ry. Co.*, 25 B. 614; 27 B. 358). Remedies of debenture-holder.

Nor is he entitled to bring ejectment (*Doe d. Myatt v. St. Helen's Ry. Co.*, 2 Q. B. 364; 2 R. C. 756).

But he is entitled to have a receiver appointed by the court notwithstanding the powers given to justices to appoint a receiver by section 54 (*Fripp v. Chard Ry. Co.*, 11 Hare, 241; see too *In re Exmouth Docks Co.*, 17 Eq. 181; *In re Herne Bay Water-works Co.*, 10 Ch. D. 42).

It seems where an incumbrancer obtains the appointment of a receiver in a proceeding under which prior incumbrancers cannot be paid and the receiver is extended to the prior incumbrances, rents received up to the time of the order extending the receiver belong to the person who institutes the original proceedings (*Lanaux v. Belfast & County Down Ry. Co.*, 1 R. 3 Eq. 454). Extending receiver to prior incumbrances.

Where the money secured by bond or mortgage is repayable on a certain day, an action lies for the money after that day (*Price v. G. W. R. Co.*, 16 M. & W. 244; *Hart v. Eastern Union Ry. Co.*, 7 Ex. 246; 8 Ex. 116). Action on bond.

And a mortgagee or bondholder may take measures in Chancery to protect his security before the money lent is repayable (*Legg v. Mathieson*, 2 Giff. 71; *Wildy v. Mid-Hants Ry. Co.*, 16 W. R. 409). Bond-holder may protect security.

Where no time was fixed for the repayment of money borrowed on the security of tolls, it was held that a mortgagee who had given notice requiring payment in six months was entitled to a receiver though no interest was in arrear (*Hopkins v. Worcester & Birmingham Canal Proprietors*, 6 Eq. 437; *Walsh v. Dublin Port & Docks Board*, 7 L. R. Ir. 533).

Debentures of a company being choses in action are not within the order and disposition clause of the Bankruptcy Act, 1869, s. 15, sub-s. 5, and an assignment of such a debenture by endorsement in blank confers a good title on the assignee as against the trustee in bankruptcy, though notice is not given to the company (*In re Price*; *Ex parte Rensburg*, 4 Ch. D. 685). Whether debentures within "order and disposition."

It may be noticed that where debentures are issued pledging the present and future stock-in-trade of the company, and the stock-in-trade is sold by the liquidator in the winding up of the company, the bankruptcy rules with regard to reputed ownership have no application, but the proceeds of sale are distributable among the debenture holders (*In re Crumlin Viaduct Works Co.*, 27 W. R. 722).

Cheque drawn by directors in order to bind the company must be stated to be signed on behalf of the company (*Serrell v. Derbyshire, &c. Ry. Co.*, 19 L. J. C. P. 371; 9 C. B. 811). Cheque when binding on company.

39. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond. Power to re-borrow.

A bond paid off and renewed without the authority of a general meeting is valid in the hands of the creditor, the clause requiring a general meeting being directory merely and intended to protect the company as between them and the directors (*Fountain v. Carmarthen Ry. Co.*, 5 Eq. 316; *Landowners, &c. Co. v. Ashford*, 16 Ch. D. 411).

40. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special Act the authority of a general meeting is Evidence of authority for borrowing.

8 Vict. c. 16,
ss. 41—43.

required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Mortgages
and bonds to
be stamped.

41. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the schedule (C.) or (D.) to this Act annexed, or to the like effect.

Where debentures for 22,000*l.* (four for 5,000*l.* and one for 2,000*l.*) were issued to secure 12,000*l.*, it was held the consideration might be apportioned so as to make two debentures for 5,000*l.* and one for 2,000*l.* valid (*In re Bagnallstown, &c. Ry. Co.*, 1 R. 4 Eq. 605).

The consideration is to be stated for the purposes of the stamp, and if the consideration is stated to be for money due or to become due up to 30,000*l.*, this is sufficient (*Landowners, &c. Co. v. Ashford*, 16 Ch. D. 411).

Rights of
mortgagees.

42. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another, by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized.

Section
directory.
Rights of
mortgage
and bond-
holders.
Bondholder
issuing
execution.

This section is directory and does not avoid a mortgage because it does not show in terms the amount advanced (*Landowners Co. v. Ashford*, 16 Ch. D. 411).

It seems that mortgagees and bond creditors have the ordinary rights of creditors against the company in addition to their other remedies under this section and section 44 (*Russell v. East Anglian Ry. Co.*, 3 M.N. & G. 125; 6 R. C. 501).

But a debenture holder and bondholder can issue execution only as a trustee for all the other debenture holders (*Bowen v. Brecon Ry. Co.*, 3 Eq. 541. See, however, *In re Potteries, &c. Ry. Co.*, 5 Ch. 67, p. 69).

If the debenture holder has been paid out of the judgment he cannot be brought back and treated as a trustee (*Fountainaine v. Carmarthen Ry. Co.*, 5 Eq. 316, 324).

An action may be maintained on a bond, though it provides that bondholders should rank *pari passu* (*Bolekow v. Herne Bay Pier Co.*, 1 E. & B. 74).

Application
of calls, not-
withstanding
mortgage.

43. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

Mortgage of
future calls
with power
of sale.

It would seem that a mortgage of future calls may contain a power of sale notwithstanding this section (*Pickering v. Ilfracombe Ry. Co.*, L. R. 3 C. P. 235).

The words "unless expressly so provided," appear to mean, provided by the mortgage deed and not by the special Act.

44. The respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever.

§ VIet. c. 16,
ss. 44—46.
Rights of
obligees.

Bond creditors have no specific lien on the property or tolls of the company under this section, so as to protect the property of the company against the general creditors of the company (*Russell v. East Anglian Ry. Co.*, 3 M.N. & G. 125; *Imp. Merc. Credit Assoc. v. Newry & Armagh Ry. Co.*, 1 R. 2 Eq. 524).

But sect. 23 of the Railway Companies Act, 1867, gives holders of mortgages, bonds, or debenture stock priority over all other claims incurred after the passing of the Act.

45. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

Register of
mortgages
and bonds.

Persons entitled to inspect the register under this section would appear to be entitled to inspection by their solicitor (see *In re Credit Co.*, 11 Ch. D. 256).

The cases under the Companies Act, 1862, in which it was held that officers of the company holding debentures which it was their duty to register, and omitting to do so, lost their security as against creditors of the company, are overruled (see *Wright v. Horton*, 12 App. C. 371, overruling *Ex parte Valpy & Chaplin*, 7 Ch. 289; *In re Native Iron Ore Co.*, 2 Ch. D. 346. See, too, *Re South Durham Iron Co.*, 48 L. J. Ch. 480; 11 Ch. D. 579; *In re Underbank, &c. Co.*, 31 Ch. D. 226).

Inspection.
Officers not
registering
security.

46. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the schedule (E.) to this Act annexed, or to the like effect.

Transfers of
mortgages
and bonds to
be stamped.

This section makes mortgages and bonds assignable at law, and the transferee is the proper person to sue (*Vertue v. East Anglian Ry. Co.*, 5 Ex. 280).

Bonds
assignable.

As against a transferee for value without notice the company cannot set up that the bonds were improperly issued (*Webb v. Herne Bay Commissioners*, L. R. 5 Q. B. 612).

And where there has been no legal transfer the company cannot set up against the equitable transferee any claims it may have against the legal holder (*In re Romford Canal Co.*, 24 Ch. D. 85).

Rights of
equitable
transferee.

The equitable transferee's rights are, however, limited to sums actually advanced or paid (*ibid.*).

If the security is not assignable at law the general rule is that the assignee takes subject to any rights which the company might set up against the assignor.

Assignee of
chase in action
takes subject
to equities.

The company cannot set off against the assignee rent accrued due from the assignor since the assignment (*Watson v. Mid-Wales Ry. Co.*, L. R. 2 C. P. 593).

The company may, however, lose the right to set up against an assignee any legal or equitable claims it may have against the assignor:

Set-off.

(a) by contract in the instrument itself;

8 Vict. c. 16,
ss. 47—49.

- (b) by contract outside the instrument;
(c) by a course of conduct.

(a) Contract
in the instru-
ment.

The mere fact that a security is payable "to A. B., his executors, administrators or transferees, or to the holder for the time being," has been held not to make it assignable free from equities (*In re Natal Investment Co.*, 3 Ch. 355).

It is not settled whether a bond to bearer, without more, imports a contract by the company not to set up equities (see *In re Blakely Ordnance Co.*, 3 Ch. 154; *Goodwin v. Roberts*, 1 App. C. 476; *In re General Estates Co.*, 3 Ch. 758; *In re Imperial Land Co. of Marseilles*, 11 Eq. 478. In the two last cases the instrument was held to be a promissory note).

(b) Contract
outside the
instrument.

If the agreement under which the debentures are issued shows that it was the intention that the debentures should be assignable free from equities, the company is bound by this agreement (*In re Blakely Ordnance Co.*, 3 Ch. 154). This was the *ratio decidendi* in this case, though it may be doubted whether it was justified by the facts.

(c) Estoppel
by conduct.

Estoppel by conduct has been held to arise in the following cases:

Bonds issued to A. B. to enable him to raise money on them are valid in the hands of an equitable assignee (*Dickson v. Swansea Vale Ry. Co.*, L. R. 4 Q. B. 44; see *Graham v. Johnson*, 8 Eq. 37).

If the company recognizes the assignee as the owner by issuing to him a certificate that he is the registered proprietor, and deals with him as the owner (*Higgs v. Assam Tea*, L. R. 4 Ex. 387; *In re Northern Assam Tea Co.*, 10 Eq. 459; *In re Hercules Insurance Co.*, 19 Eq. 302).

If the company submits to judgment on the bonds (*In re South Essex Co.*, 11 Eq. 167).

Rights as
between
assignor and
assignee.

A different question arises as between assignor and assignee. If the instrument is not negotiable at law an assignee for value without notice gets no better title than his assignor, whether the instrument is expressed to be payable to bearer or not (*Crouch v. Crédit Foncier of England*, L. R. 8 Q. B. 374).

Here, however, the doctrine of estoppel may again come in. For instance, a person who deposits with an agent an instrument purporting to be payable to bearer, cannot set up the fraud of the agent against a purchaser for value without notice, on the ground that he has adopted the representation contained in the instrument (*Goodwin v. Roberts*, 1 App. C. 476; *Easton v. London Joint Stock Bank*, 34 Ch. D. 95; *Williams v. Colonial Bank*, W. N. 1887, 151).

Transfers of
mortgages
and bonds to
be registered.

47. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Payment of
interest on
moneys
borrowed.

48. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

Transfers of
interest to be
stamped.

49. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

50. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

8 Vict. c. 16,
ss. 50—52.

Repayment
of money
borrowed at
time fixed.

See notes to section 38, *ante*.

51. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London* or *Dublin Gazette*, according as the principal office of the company shall be in *England* or *Ireland*, and in some newspaper as after mentioned.

Repayment
of money
borrowed
where no
time fixed.

See notes to section 38, *ante*.

52. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Interest to
cease on ex-
piration of
notice to pay
off mortgage
or bond.

Interest is payable on a debenture bearing interest up to the time of repayment from the day on which the sum is repayable (*Price v. G. W. Ry. Co.*, 16 M. & W. 244; *Cook v. Fowler*, L. R. 7 H. L. 27).

And if interest is not payable up to the day fixed for repayment it seems interest from the day of repayment would be allowed by way of damages under the statute 3 & 4 Will. IV. c. 42, s. 28 (see the judgments in *Gordillo v. Weguelin*, 5 Ch. D. 287).

Interest on
debentures.

Interest by
way of
damages.

But interest under the statute will only be allowed from the time at which a definite sum is payable and not upon uncertain sums payable to a contractor under a contract (*Hill v. S. Staffordshire Ry. Co.*, 18 Eq. 154. See the cases there cited).

Upon a mortgage of land which contains no covenant to pay interest, only six years' interest can be recovered under 3 & 4 Will. IV. c. 27, and 3 & 4 Will. IV. c. 42, s. 3 (*Hodges v. Croydon Canal Co.*, 3 B. 86).

What interest
recoverable.

§ Viet. c. 16,
ss. 53, 54.

But a mortgagee of tolls which are not within 3 & 4 Will. IV. c. 27, may recover interest for twenty years (*Mellish v. Brooks*, 3 B. 22).

And it is now settled that a mortgagee with a covenant to pay interest can recover only six years' interest against the land, so that he is in the position of a secured creditor as regards the principal, and six years' interest, and of an unsecured creditor as regards the rest (*Hunter v. Nockolds*, 1 Mac. & G. 640).

Interest on a
loan.

It seems simple interest at five per cent. is payable upon a loan to a company (*Ex parte Chippendale, Re German Mining Co.*, 4 D. M. & G. 19; *Norwich Yarn Co.*, 22 B. 143, 167; *Troup's Case*, 29 B. 353).

Interest on a
judgment.

If the creditor recovers judgment the debt is merged in the judgment and he is entitled to interest on the judgment at four per cent. (*In re European Central Ry. Co.*, *Ex parte Oriental Financial Corpn.*, 4 Ch. D. 33).

Arrears of
interest, when
to be enforced
by appoint-
ment of a
receiver.

53. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum, alone, or if his debt does not amount to the prescribed sum he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of
principal and
interest.

Appointment
of receiver.

54. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest, and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

See notes to section 38, *ante*.

55. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom without fee or reward.

8 Vict. c. 18,
ss. 55—59.

Access to
account books
by mort-
gagees.

Loans.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:—

56. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special Act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or, having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

Power to
convert loan
into capital.

57. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

New shares to
be considered
same as
original
shares.

58. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special Act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed to each shareholder, according to his address in the shareholders' address book, or left at his usual or last place of abode.

If old shares
at premium
new shares to
be offered to
the share-
holders.

59. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

Shares to vest
in the parties
accepting;
otherwise to
be disposed
of by the
directors

The conditions with reference to the period within which new shares are to be applied for must be strictly followed, and it has been held that a person who owing

8 Vict. c. 16,
ss. 60—64.

to absence abroad could not receive notice in time to make his application, was not entitled to relief (*Pearson v. London & Croydon Ry. Co.*, 4 R. C. 62; 14 Sim. 541; *Campbell v. London & Brighton Ry. Co.*, 4 R. C. 475; 5 Hare, 519).

If not at a
premium, to
be issued as
company
think fit.

60. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

Consolidation
of shares.

And with respect to the consolidation of the shares into stock, be it enacted as follows:—

Power to con-
solidate shares
into stock.

61. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

A bequest of shares in a railway will pass stock (*Morrice v. Aylmer*, L. R. 7 H. L. 717).

Proprietors of
stock may
transfer the
same.

62. After such conversion or consolidation shall have taken place all the provisions contained in this or the special Act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special Act; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or if no amount be prescribed a sum not exceeding two shillings and sixpence.

Register of
stock.

63. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock;" and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking.

Proprietors of
stock entitled
to dividends.

64. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such

interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

8 Vict. c. 16,
s. 65.

65. And be it enacted, that all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs (a) and expenses incurred in obtaining the special Act, and all expenses incident thereto, and, secondly, in carrying the purposes (b) of the company into execution.

Application of
capital.

(a) Costs within this section may be recovered against the company by action (*Hitchins v. Kilkenny Ry. Co.*, 9 C. B. 536).

Costs recoverable by action.

The Statute of Limitations begins to run against a person entitled to costs under this section only from the time when the company first has assets applicable to their payment (*In re Kensington Station Act*, 20 Eq. 197).

There is no objection to an agreement between promoters and a solicitor that the promoters shall not be personally liable for costs, but that the costs shall be paid out of the funds of the company (*Parsons v. Spooner*, 5 Hare, 102).

Promoters not to be liable for costs.

The costs of a solicitor with reference to an entire scheme, part only of which is authorized by the Act, when it passes, are costs incurred in obtaining the special Act under this section (*Re Tilleard*, 11 W. R. 764; 32 L. J. Ch. 765; 3 D. J. & S. 519).

Costs within the section.

A person employed as clerk to the promoter of a company who has looked only to the promoters for payment cannot claim against the company for work done in relation to the obtaining of the Act (*In re Kent Tramways Co.*, 12 Ch. D. 312).

A person may, of course, notwithstanding this section, or notwithstanding similar provisions inserted in the private Act, agree to indemnify the company against the costs incurred in obtaining the special Act (*Savin v. Hoylake Ry. Co.*, L. R. 1 Ex. 9).

Indemnity against costs.

But an agreement to indemnify the promoters will not exonerate the company in its corporate capacity from the costs (*In re Brampton & Longtown Ry. Co.*, 10 Ch. 177. See *In re Brampton & Longtown Ry. Co.*, *Addison's Case*, 20 Eq. 620).

The Board of Trade may under the Railways Abandonment Act, 1869 (32 & 33 Vict. c. 114, s. 5), direct the parliamentary deposit to be applied as part of the assets of the company. See the notes to that act, *post*.

Deposit applied as assets.

(b) A shareholder is entitled to an injunction to restrain the company from applying its funds to purposes which are not authorized by the conditions under which the shareholder subscribed his money.

What are the purposes of the company.

It is a matter of considerable difficulty to lay down any rules as to what objects are within the powers of the company. But the following cases may be cited in illustration of the general principle.

A railway company may not apply its funds to promote a bill in parliament for extended powers (*Munt v. Shrewsbury, &c. Ry. Co.*, 20 L. J. Ch. 169; 13 Beav. 1; *East Anglian Ry. Co. v. Eastern Counties Ry. Co.*, 11 C. B. 775; *Stevens v. S. Devon Ry. Co.*, 20 L. J. Ch. 491; *Maunsell v. Midl. & G. W. Ry. Co.*, 32 L. J. Ch. 513; *Caledonian Ry. Co. v. Solway Junction Ry. Co.*, 32 W. R. 164; 49 L. T. 526).

1. Application to parliament.

But it would seem a company may devote its funds to oppose a bill, the passing of which might endanger the prosperity of the company (see *A.-G. v. Andrews*, 2 Mac. & G. 225; *Bright v. North*, 2 Ph. 216; *A.-G. v. Mayor of Norwich*, 2 M. & Cr. 406; *A.-G. v. Eastlake*, 11 H. 205; *A.-G. v. Mayor of Brecon*, 10 Ch. D. 204; see *R. v. White*, 14 Q. B. D. 358).

Opposition to dangerous bill.

Apart from any question of the application of its funds a company may promote, and it would seem oppose, a bill in parliament, and though there may be cases in

- 8 Vict. c. 16, s. 65. which the court will restrain a company from promoting a bill in parliament, no such case has ever yet arisen (see *In re L. C. & D. Ry. Co.*, 5 Ch. 671).

Thus a company will not be restrained from making an application to parliament, though such application may be in violation of an undertaking or contract (*A.-G. v. Manchester, &c. Ry. Co.*, 1 R. C. 436; *Lancaster, &c. Ry. Co. v. N. W. Ry. Co.*, 2 K. & J. 293).

So they will not be restrained from applying to parliament to enable them to abandon an agreement with a landowner to purchase his land (*Steele v. N. Met. Ry. Co.*, 2 Ch. 237; see *Telford v. Met. Bd. of Works*, 13 Eq. 574; *Heathcote v. N. Staffordshire Ry. Co.*, 2 Mac. & G. 109; 20 L. J. Ch. 82).

There is nothing illegal in an agreement by a company to withdraw opposition to the bill of another company (*Shrewsbury & Birmingham Ry. Co. v. L. & N. W. Ry. Co.*, 2 H. & Tw. 257, 278. See 17 Q. B. 652).

2. Litigation. A railway company cannot expend its funds in prosecuting a suit instituted by a shareholder on behalf of himself and other shareholders against the company and its directors to make the latter liable for improper dealings with shares and moneys of the company (*Kernaghan v. Williams*, 6 Eq. 228. See *Pickering v. Stephenson*, 14 Eq. 322; *Studdert v. Grosvenor*, 33 Ch. D. 529).

And litigation between different sections of the company cannot be paid out of the funds of the company (*Pickering v. Stephenson*, 14 Eq. 322; *Smith v. Duke of Manchester*, 24 Ch. D. 610).

3. Proxy papers. The directors ought not to apply the funds of the company in printing, stamping, and posting proxy papers in their own favour (*Studdert v. Grosvenor*, 33 Ch. D. 528).

4. Construction of line. Funds raised for constructing new lines must not be applied upon the original line (*Bagshaw v. Eastern Union Ry. Co.*, 2 M'N. & G. 389).

- Construction of part of line. A company authorized to make a line between two points, and having raised money for that purpose, cannot abandon a portion of the proposed line and apply the money otherwise than for making the whole line (*Cohen v. Wilkinson*, 12 B. 138; 1 Mac. & G. 481; *Bagshaw v. Eastern Union Ry. Co.*, 7 Hare, 114; 6 R. C. 152; see *Hodgson v. Earl Powis*, 19 L. J. Ch. 356, 418; 12 Beav. 392, 529; *Graham v. Birkenhead, Lancashire & Cheshire Junction Ry. Co.*, 12 Beav. 460; 2 Mac. & G. 146; 2 H. & Tw. 450).

And see the notes to section 6 of the Railways Clauses Act, *post*, where the question is discussed how far companies can be compelled directly or indirectly to exercise their powers.

A company authorized to lay down broad gauge may lay down narrow gauge as well (*Beman v. Rufford*, 15 Jur. 914; 1 Sim. N. S. 550).

5. Purchase of shares. A railway company cannot apply its funds to the purchase of shares in another company (*Salomons v. Laing*, 12 Beav. 339).

But it would seem that where it is authorized to hold a certain number of shares in another company, it would be entitled to hold additional shares allotted in respect of the old shares (*G. W. Ry. Co. v. Met. Ry. Co.*, 11 W. R. 481, 706; 32 L. J. Ch. 382).

A railway company cannot secure the capital and guarantee the profits of a steamboat company to run in connection with their line (*Colman v. Eastern Counties Ry. Co.*, 10 B. 1; 4 R. C. 513; *Macgregor v. Deal & Dover Ry. Co.*, 22 L. J. Q. B. 69; 18 Q. B. 618).

But a railway company may enter into a contract with a shipowner for the supply by the latter of steamers to carry passengers and goods from the terminus of the railway (*S. Wales Ry. Co. v. Redmond*, 9 W. R. 806).

6. Employment of property for purposes not authorized. A railway company bound to supply boats for a ferry may employ the boats when not wanted for the ferry in excursions to places not mentioned in its acts (*Forest v. Manchester, &c. Ry. Co.*, 30 B. 40).

But where the special Act provided that lands purchased by the company should vest in them for the use of a certain navigation, but for no other use or purpose whatever, it was held that the company could be restrained at the suit of a neighbouring landowner from using a reservoir constructed upon the purchased lands for the purpose of letting boats for hire (*Bostock v. North Staffordshire Ry. Co.*, 4 W. R. 336; 5 De G. & S. 584; 4 E. & B. 798; 3 Sm. & G. 283).

7. Carrying on trades. It is *ultra vires* of a railway company to work coal mines or to deal in coal for purposes of profit (*A.-G. v. G. N. Ry. Co.*, 8 W. R. 556; 1 Dr. & Sm. 154).

Where a company has worked collieries a subsequent Act authorizing the company to dispose of its collieries within five years will legalise past workings and entitle the company to continue the workings down to the sale (*Eccles Commrs. v. N. E. Ry. Co.*, 4 Ch. D. 845).

- Use of surplus rolling stock. It would seem that a company possessing rolling stock acquired or manufactured for the purposes of the company would be entitled to let such rolling stock when it is not wanted for the working of its own line (*A.-G. v. G. E. Ry. Co.*, 11 Ch. D. 449; 48 L. J. Ch. 428; 5 App. C. 473; upon this point all the judges appear to have been agreed).

Where the lines of two companies are continuous, and the traffic of Company B. can only be profitably worked in connection with that of Company A., it would seem that Company A. may agree to supply Company B. with such rolling stock as it may require, though this may involve the manufacture by Company A. of rolling stock in excess of its own wants (*A.-G. v. G. E. Ry. Co.*, 11 Ch. D. 449; 48 L. J. Ch. 428; 5 App. C. 473).

8 Vict. c. 16, ss. 66, 67.

Manufacture of stock for use of another company.

A railway company may charge for the use of weighing machines for goods at its stations (*L. & N. W. Ry. Co. v. Price*, 11 Q. B. D. 485).

It may also out of its funds give gratuities to servants or directors of the company (*Hutton v. West Cork Ry. Co.*, 23 Ch. D. 654).

8. Gratuities to officers.

A subscription to the Imperial Institute has been held *ultra vires* (*Tomkinson v. S. E. Ry. Co.*, 35 Ch. D. 675).

A company cannot bind itself not to exercise its compulsory powers (*Ayr Harbour Trustees v. Oswald*, 8 App. C. 623).

9. Compulsory powers.

As to the legality and construction of traffic agreements and running powers, see the Railways Clauses Consolidation Act, 1845, sections 87 and 92.

Traffic arrangements and running powers.

See, too, the cases cited under section 97 of this Act with regard to contracts *ultra vires* of the company.

Who can restrain act *ultra vires*.

Most of the cases above cited were cases in which the complaint was made by a shareholder or by a neighbouring landowner who considered himself injured. In what cases the attorney-general, acting on behalf of the public, is entitled to restrain a company from exceeding its powers is not settled.

1. Act prohibited by statute.

It would seem that where an act is done which is expressly prohibited by statute, the attorney-general may sue (*A.-G. v. Cockermouth Local Board*, 18 Eq. 172; see 11 Ch. D. 470).

2. Public damage shown.

So, too, if something in excess of the company's powers is done, and there is a substantial injury to the public or a large section of the public (*A.-G. v. G. N. Ry. Co.*, 8 W. R. 556; 1 Dr. & Sm. 154, where the company was restrained from carrying on a large coal business; see 11 Ch. D. 483, 484).

3. Act *ultra vires*, but no damage.

If the act is one which in its nature tends to injure the public (such as interference with a highway or navigable stream), the attorney-general can sue without showing actual damage (*A.-G. v. Shrewsbury Bridge Co.*, 21 Ch. D. 752).

It appears, however, to be doubtful whether the attorney-general could maintain an action merely on the ground that the company is exceeding its powers, where no substantial public damage is shown (*A.-G. v. G. E. Ry. Co.*, 11 Ch. D. 449; 48 L. J. Ch. 428; 5 App. C. 473).

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows :

General meetings.

66. The first general meeting of the shareholders of the company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special Act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

Ordinary meetings to be held half yearly.

67. No matters, except such as are appointed by this or the special Act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Business at ordinary meetings.

Special notice of intention to vote remuneration to directors should be given (*Hutton v. West Cork Ry. Co.*, 23 Ch. D. 654).

Notice of intention "to remove any of the present directors" would, it seems, justify resolutions removing all the directors (*Isle of Wight Ry. Co. v. Tahourdin*, 25 Ch. D. 320).

8 Vict. c. 16,
ss. 68—72.

Extraordi-
nary meet-
ings.

68. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting;" and such meetings may be convened by the directors at such times as they think fit.

Business at
extraordinary
meetings.

69. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Extraordi-
nary meet-
ings may be
required by
shareholders.

70. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days' public notice thereof.

Notice of
nature of
business.

Directors are bound to give full notice of the objects for which an extraordinary meeting is required to be held; and though the requisition may be so expressed that resolutions following its precise terms might be illegal, the directors are not entitled to limit the notice, if the objects stated in the requisition can be carried out in a legal manner. If the directors send out an insufficient notice the requisitionists may treat the meeting as invalid and may call one themselves (*Isls of Wight Ry. Co. v. Tahourdin*, 25 Ch. D. 320).

Notice of
meetings.

71. Fourteen (a) days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special Act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

(a) It seems fourteen clear days' notice must be given (*R. v. JJ. of Shropshire*, 8 A. & E. 173; *R. v. Aberdeen Canal Co.*, 14 Q. B. 854; *Adey v. Hill*, 4 C. B. 38; *In re Railway Sleepers' Supply Co.*, 29 Ch. D. 204).

As to the advertisement, see *post*, section 138.

Quorum for a
general meet-
ing.

72. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be prescribed then shareholders holding in the aggregate not less than one twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which

case twenty shareholders, holding not less than one twentieth of the capital of the company, shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present no business shall be transacted at the meeting, other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

8 Vict. c. 16,
ss. 73—76.

73. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Chairman at
general meet-
ings.

74. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Business at
meetings and
adjourn-
ments.

75. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares; provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Votes of
shareholders.

A resolution need not be proposed or seconded if it is put to the meeting by the chairman (*In re Horbury Bridge, &c. Co.*, 11 Ch. D. 109, 117).

76. The votes may be given either personally or by proxies, being shareholders, authorized by writing according to the form in the schedule (F.) to this Act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Manner of
voting.

8 Vict. c. 16,
ss. 77—82.

Regulations
as to proxies.

77. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

By the Stamp Act, 1870 (33 & 34 Vict. c. 97, s. 102, and 34 Vict. c. 4, s. 4), a proxy paper authorizing one or more persons to vote is liable to a penny stamp, and can only be used for the meeting named in the paper or any adjournment thereof.

If the special Act authorizes the appointment of a person to vote at all meetings, the document making the appointment will be chargeable as a letter or power of attorney with a ten shilling stamp (see *Trinity House at Hull v. Beagle*, 18 L. J. Q. B. 78; 13 Q. B. 175).

Votes of joint
shareholders.

78. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of
lunatics and
minors, &c.

79. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Proof of a particular
majority of votes
only required
in the event
of a poll being
demanded.

80. Whenever in this or the special Act the consent of any particular majority of votes at any meeting of the company is required in order to authorize any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorizing such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same.

It seems a poll, if demanded, may be taken then and there (*R. v. D'Oyly*, 12 A. & E. 139; *In re Chillington Iron Co.*, 29 Ch. D. 159; see *In re Horbury Bridge, &c. Co.*, 11 Ch. D. 109).

Appointment
and rotation of
directors.

And with respect to the appointment and rotation of directors, be it enacted as follows:

Number of
directors.

81. The number of directors shall be the prescribed number.

If the number of directors is less than the prescribed number, acts done by the directors, such as calls, forfeiture of shares, and the like, are invalid (*Kirk v. Ball*, 16 Q. B. 290; *In re Alina Spinning Co.*, 16 Ch. D. 681; see *Thames Haven, &c. Co. v. Rose*, 4 Man. & G. 552).

Power to vary
the number
of directors.

82. Where the company shall be authorized by the special Act to increase or to reduce the number of the directors, it shall be

lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

8 Vict. c. 16,
ss. 83—85.

83. The directors appointed by the special Act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special Act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special Act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter, the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at any such meeting, being neither removed or disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Election of
directors.

An agreement depriving the shareholders of the power of electing directors is invalid (*James v. Etc.*, L. R. 6 H. L. 335).

84. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Existing
directors con-
tinued on
failure of
meeting for
election of
directors.

85. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

Qualification
of directors.

The provision directing that no person shall be a director who is not a shareholder, or possessed of the required number of shares, applies only to elected directors, and not to directors named in the special Act (*Porter v. Emmens*, 1 C. P. D. 664, 667).

A person appointed director by the special Act is liable as a contributory for the number of shares necessary for his qualification, though he may never have acted as a director, and directors other than those named in the Act may have been appointed

When director
liable for
qualification
shares.

8 Vict. c. 16,
ss. 86—88.

Qualification
is condition
precedent to
election.

Cases in
which office
of director
shall become
vacant.

at the first general meeting (*Kincaid's case*, 11 Eq. 192; *Portal v. Emmens*, 1 C. P. D. 201, 664).

It would seem clear that under this section the holding of the prescribed number of shares is a condition precedent to election as a director (see *Miller's case*, 3 Ch. D. 661; 5 Ch. D. 70; *Barber's case*, 5 Ch. D. 963; *Hamley's case*, 5 Ch. D. 705; *Jenner's case*, 7 Ch. D. 132, cases under the Companies Acts).

The fact that an unqualified person acts as director does not import a contract on his part to take the requisite shares (*Brown's case*, 9 Ch. 102; *Marquis of Abercorn's case*, 4 D. F. & J. 78; see, too, the notes to section 86, *infra*).

86. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

It seems that an equitable assignment by a director of his qualification shares will not deprive him of his office till the equitable title is completed by notice to the company (*Ex parte Littledale*, 24 L. J. B. 9).

Where a director is interested in a contract with the company, the contract is not void under sections 85 and 86, though it disqualifies the director (*Foster v. Oxford, &c. Ry. Co.*, 13 C. B. 200; 22 L. J. C. P. 99; 17 Jur. 167).

It would seem that the company could enforce a contract entered into between the company and a director of the company for the benefit of the director or his firm, but such a contract cannot be enforced by the director or his assigns against the company (*Flanagan v. G. W. Ry. Co.*, 7 Eq. 116; see *Aberdeen Ry. Co. v. Blaikie*, 1 Macq. 461).

Sections 85 and 86 apply to contracts with the company in the execution of its enterprise, and do not disqualify members of a banking association, who are the bankers of the company, from being directors of the company (*Sheffield v. Manchester, &c. Ry. Co.*, 7 M. & W. 574; 2 R. C. 522).

Shareholder
of an incor-
porated joint
stock com-
pany not
disqualified
by reason of
contracts.

87. Provided always, that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special Act; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company.

Rotation of
directors.

88. The directors appointed by the special Act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say,)

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office:

At the end of the second year the prescribed number, and if no number be prescribed one half of the remaining number of such directors, to be determined in like manner, shall go out of office:

**8 Vict. c. 18,
ss. 89, 90.**

At the end of the third year the prescribed number, and if no number be prescribed the remainder of such directors, shall go out of office:

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one third as may be, shall go out of office, so that the whole number shall go out of office in three years.

89. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation, as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

Supply of occasional vacancies in office of directors.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows:

Powers of directors.

90. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the special Act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special Act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

Powers of the company to be exercised by the directors.

The directors cannot of course bind the company by any act which is *ultra vires* of the company (see *ante*, notes to sect. 65).

But they may exercise all the powers of the company, provided they act in the interests of the company.

Powers of directors.

8 Vict. c. 16,
s. 80.

Gratuities to
servants.

Cost of litigation.

The company
alone can sue
to recover
property.

Representa-
tive action.

Fraud.

Action for
account.

Acts *ultra
vires*.

Thus, they may give gratuities to servants of the company in a successful year (*Hampson v. Price's Patent Candle Co.*, 45 L. J. Ch. 437).

They may also out of the funds of the company pay the costs of prosecuting a discharged servant for carrying placards defamatory of the company and its directors in front of its place of business (*Studdert v. Grosvenor*, 33 Ch. D. 528).

They cannot out of the funds of the company pay for litigation undertaken for their own protection as directors (*ibid.*).

Nor can they pay for the stamps on proxies or the return postage of proxies, and if they send out proxies to secure votes for themselves they cannot charge the cost of printing or posting them against the company (*ibid.*).

The company is the proper plaintiff, and the only proper plaintiff, for the purpose of bringing actions to recover property either from its directors or officers, or any other person (*Macley v. Alston*, 1 Ph. 790; *Foss v. Harbottle*, 2 H. 461; *Russell v. Wakefield Waterworks Co.*, 20 Eq. 474; *Gray v. Lewis*, 8 Ch. 1035; *Duckett v. Gover*, 6 Ch. D. 82; see 11 Ch. D. 106).

An action cannot be brought in the name of the company without the consent of the majority of the shareholders; therefore where a shareholder brings an action in the name of the company, the court may direct a meeting of the company, and if a majority disapprove of the action, the name of the company will be struck out as plaintiff (*Exeter & Crediton Ry. Co. v. Buller*, 5 R. C. 211; *East Pant Du Lead Mining Co. v. Merryweather*, 13 W. R. 216; 2 H. & M. 264; *Macdougall v. Gardiner*, 1 Ch. D. 13; see, too, *Cape Breton Co. v. Fenn*, 17 Ch. D. 198).

Liberty may, however, be given to amend the writ and add the company as a defendant (*Silber Light Co. v. Silber*, 12 Ch. D. 717).

Where a meeting of the shareholders has power to remove directors for reasonable cause, the court will not interfere in the absence of fraud, on the ground that the cause was not such as a court of justice would think reasonable (*Indercick v. Snell*, 2 M.N. & G. 217).

Nor will the court restrain directors from acting as such, as the shareholders can remove them (*Hattersley v. Earl of Shelburne*, 10 W. R. 881; 31 L. J. Ch. 873).

In respect of all such matters as are capable of confirmation by a majority of the company, an individual shareholder cannot, as a rule, maintain an action on behalf of himself and other shareholders; in order to maintain such an action, he must make out a case of illegality, oppression, or fraud (*Macdougall v. Gardiner*, 1 Ch. D. 13; *Pender v. Lushington*, 6 Ch. D. 70).

Thus, an individual shareholder may bring an action on behalf of himself and others where the persons whose conduct is impeached have control over a majority of votes, and the company may be made a defendant (*Atwool v. Merryweather*, 5 Eq. 464, n.; *Menier v. Hooper's Telegraph Co.*, 9 Ch. 350; *Mason v. Harris*, 11 Ch. D. 97; 27 W. R. 699).

Upon this principle an injunction has been granted to restrain directors from fixing a general meeting for a day when the votes of the majority of the shareholders would not be available (*Cannon v. Trask*, 20 Eq. 669).

So, too, a director may bring an action against the company and his co-directors for wrongfully excluding him from acting as a director (*Fulbrook v. Richmond Mining Co.*, 9 Ch. D. 610).

After the undertaking has been under statutory powers handed over to another company in consideration of moneys which are in the control of the directors of the old company, a shareholder may maintain an action for account against the directors (*Cramer v. Bird*, 6 Eq. 143).

Similarly, when an Act directed that a company should transfer its property to another company and be dissolved, and that the money to be paid by the purchasing company should be applied in a particular way among creditors and preferential shareholders, it was held that a properly framed bill by a creditor and preferential shareholder might be sustained (*Ward v. Sittingbourne & Sheerness Ry. Co.*, 9 Ch. 488).

Any shareholder may bring an action against the company in respect of an act which is *ultra vires*, and he may sue either in a representative action or as sole plaintiff (*Hoole v. G. W. Ry. Co.*, 3 Ch. 262; *Simpson v. Westminster Palace Hotel Co.*, 8 H. L. 712).

In such cases the fact that a majority of the shareholders at a meeting of the company disapprove the course adopted by the plaintiff is, of course, immaterial (see *Beman v. Rufford*, 1 Sim. N. S. 550; 20 L. J. Ch. 537; *Winch v. Birkenhead Ry. Co.*, 16 Jur. 1035; *Dagshaw v. Eastern Union Ry. Co.*, 19 L. J. Ch. 410; *Hars v. London & N. W. Ry. Co.*, 30 L. J. Ch. 817; *G. W. Ry. Co. v. Rushout*, 5 De Gex & Sm. 290).

A plaintiff is entitled to sue on behalf of himself and all others similarly interested, though no members of the class besides himself may be willing to sue.

But though there may be members of the class willing and entitled to sue, the suit cannot be maintained if the plaintiff is personally precluded from suing (*Burt v. British Nation Life Assurance Association*, 4 De G. & J. 158). 8 Vict. c. 16,
s. 91.

It has been held that the holder of a scrip certificate cannot maintain an action on behalf of himself and all other shareholders after he has assigned the shares mentioned in the scrip (*Doyle v. Muntz*, 5 Hare, 509). Action by
scrip holder.

And it would seem from the same case that a shareholder who is a mere trustee cannot maintain a representative action. Bare trustee.

The original allottee or the purchaser of scrip issued to raise funds for a particular purpose, whether he has been registered or not, may maintain an action on behalf of himself and other scrip-holders to restrain the company from applying the funds to other purposes, and the vendor of the scrip need not be a party (*Bagshaw v. Eastern Union Ry. Co.*, 7 H. 114; 2 Mac. & G. 389).

The doubt expressed in the head-note to *Mills v. Northern Ry. of Buenos Ayres Co.*, 5 Ch. 620, as to whether persons having an equitable interest in shares, but not being registered shareholders, can maintain an action to restrain an act *ultra vires*, does not appear to be supported either by the judgment or by principle (see *G. W. Ry. Co. v. Rushout*, 5 De G. & S. 290). The trustees should, of course, be made parties to such an action. Equitable
owner.

It is no objection to an action by a shareholder that he has become a shareholder for the purpose of bringing the action (*Seaton v. Grant*, 2 Ch. 459; *Bloxam v. Met. Ry. Co.*, 3 Ch. 337). Shares
bought with
a view to an
action.

But a person who is indemnified by other parties, and is not *bond fide* acting in his own interest as shareholder, will not be allowed to maintain an action (*Forrest v. Manchester, &c. Ry. Co.*, 7 Jur. N. S. 887; 4 D. F. & J. 126; *Filder v. L. B. & S. C. Ry. Co.*, 1 H. & M. 489).

In such a case, under the old practice, the bill was ordered to be taken off the file on motion (*Robson v. Dodds*, 8 Eq. 301).

Where the illegal act is the act of the whole company or its executive, different classes of shareholders need not be independently represented (*Hoole v. G. W. Ry. Co.*, 3 Ch. 262). Interests to
be repre-
sented.

In the case of representative actions, the class which the plaintiff represents must be a class of persons having the same interest, and must not be composed of persons who have adverse claims (*Ward v. Sittingbourne & Sheerness Ry. Co.*, 9 Ch. 488).

Where an action is brought in respect of an act *ultra vires*, which may affect the rights of any particular class of shareholders, that class is sufficiently represented by one of its members (*Hoole v. G. W. Ry. Co.*, 3 Ch. 262; see *Cramer v. Bird*, 6 Eq. 143).

Each shareholder, it is said, has a separate right of action in respect of a declared dividend; therefore an action by a shareholder of a particular class on behalf of the class to restrain the payment of a declared dividend cannot be maintained where all the other shareholders are not parties (*Carlisle v. S. E. Ry. Co.*, 6 R. C. 670). Action to
restrain
payment of
declared
dividend.

But this decision seems difficult to reconcile with principle (see *Smith v. Cork & Bandon Ry. Co.*, 1 R. 5 Eq. 65).

A mere simple contract creditor of the company cannot maintain an action to restrain an illegal application of the funds of the company (*Mills v. Northern Ry. of Buenos Ayres Co.*, 5 Ch. 621). Creditor
cannot
restrain act
ultra vires.

91. Except as otherwise provided by the special Act, the following powers of the company (that is to say), the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special Act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary (a), the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company. Powers of
the company
not to be
exercised by
the directors.

(a) The secretary of the company may recover for his work and services, though no determination as to his remuneration has been come to at a general meeting (*Bill v. Darent Valley Ry. Co.*, 26 L. J. Ex. 81; 1 H. & N. 305).

8 Vict. c. 18,
ss. 92—96.

Under this section a general meeting has power to remove directors and to appoint others if there are no remaining directors willing to act under section 89 (*Isle of Wight Ry. Co. v. Tahourdin*, 25 Ch. D. 320).

*Proceedings
of directors.*

And with respect to the proceedings and liabilities of the directors, be it enacted as follows :

Meetings of
directors.

92. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place; and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as one of the directors.

Permanent
chairman of
directors.

93. At the first meeting of directors held after the passing of the special Act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal or disqualification had not happened.

Occasional
chairman of
directors.

94. If at any meeting of the directors neither the chairman nor deputy chairman be present the directors present shall choose some one of their number to be chairman of such meeting.

Committees
of directors.
Powers of
committees.

95. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them.

Meetings of
committees.

96. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers intrusted to them except at a meet-

ing at which there shall be present the prescribed quorum, or if no quorum be prescribed then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

8 Vict. c. 18,
s. 97.

97. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows: (that is to say,)

Contracts by
committee
or directors
how to be
entered into.

With respect to any contract which, if made between private persons would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

The old rules with regard to the formalities necessary to make contracts entered into by directors binding on the corporation, will be found well stated in *East London Waterworks Co. v. Bailey*, 4 Bing. 283.

Old law as to
contracts with
corporations.

The old law is, however, considerably varied by this section in the case of companies to which the Act applies. The following rules would appear still to be useful:—

Where a contract is entered into and the contract is not executed with the formalities required by the statute, if the work is not matter of necessity nor of that sort of convenience which requires immediate action, the contractor cannot recover against the company, even though the work has been actually done (*Diggle v. London & Blackwall Ry. Co.*, 5 Ex. 442, where the contract was to convert the rope and stationary engine system to the ordinary locomotive principle; see, too,

Contract for
matter of
importance.

8 Vict. c. 18, s. 97. *Hunt v. Wimbledon Local Board*, 4 C. P. D. 48; *Young & Co. v. Mayor of Leamington Spa*, 8 App. C. 517).

Informal contract to employ agent. Additional works. So no action lies for money due under an informal contract to employ a person for a matter outside the ordinary business of the company, as, for instance, to negotiate the lease of another line (*Cope v. Thames Haven Dock & Ry. Co.*, 3 Ex. 841).

In the same way, where the engineer of the company orders additional works to be constructed, no action lies upon the agreement for the additional works after they are done, as the section, though it authorises parol contracts to be entered into, only authorises them to be made by the directors as such (*Homersham v. Wolverhampton Waterworks Co.*, 6 Ex. 137; see, too, *Williams v. Chester & Holyhead Ry. Co.*, 15 Jur. 828).

Refusal to execute formal agreement. Nor can an action be maintained either for damages because the company refuses to enter into an agreement binding under the statute, or to enforce specific performance of the agreement in the absence of part performance (*London Dock Co. v. Sinnott*, 8 E. & B. 347; *Leominster Canal Navigation Co. v. Shrewsbury & Hereford Ry. Co.*, 3 K. & J. 654, where the head-note is misleading, as it seems to imply that there were acts of part performance).

Part performance. Where the claim is merely for the recovery of a sum of money, acts of part performance will not cure the insufficiency of the contract (*Jackson v. N. Wales Ry. Co.*, 6 R. C. 113; *Crampton v. Varra Ry. Co.*, 7 Ch. 562).

Where, however, there is something more to be done under the contract than mere payment of money, if there have been acts of part performance, the company must be taken to have acquiesced in and adopted the contract, and specific performance will be decreed (*London & Birmingham Ry. Co. v. Winter*, Cr. & Ph. 57; *Laird v. Birkenhead Ry. Co.*, Jo. 500; *Wilson v. West Hartlepool Ry. Co.*, 2 D. J. & S. 475; and see *Crook v. Corporation of Seaford*, 6 Ch. 551).

Entry in minute book. An entry in the minute book of the company containing all the terms of an agreement, and signed in accordance with the Act, would be a sufficient memorandum to bind the company under the Statute of Frauds (see *Jones v. Victoria Graving Dock Co.*, 2 Q. B. D. 314).

Goods sold and delivered. By virtue of the third sub-section of this section, where a company has accepted goods under a contract by an agent not authorised to enter into such a contract, there is evidence of a contract by the company, and the company will be liable for the price of the goods (*Pauling v. L. & N. W. Ry. Co.*, 8 Ex. 867; see *Beverley v. Lincoln Gas Light and Coke Co.*, 6 A. & E. 829. The case of *Williams v. Chester & Holyhead Ry. Co.*, 15 Jur. 828, is not easily reconcilable with the other authorities).

Occupation rent. Similarly, a company taking possession of land is liable for use and occupation, and if it enters under a parol agreement for a yearly tenancy it seems it would be liable for rent till the end of the year, if it gives up possession before the end of the year without notice to quit (*Lous v. L. & N. W. Ry. Co.*, 21 L. J. Q. B. 361. The case of *Finlay v. Bristol & Exeter Ry. Co.*, 7 Ex. 409, was not within this section).

Yearly tenancy presumed. And a demise from year to year would be presumed against the company from receipt of rent in the same way as it would against a private individual (*Doc d. Pennington v. Taniers*, 12 Q. B. 998; 18 L. J. Q. B. 49).

Appointment of attorney. In a case not under the Companies Clauses Act, 1845, it has been held that a corporation need not appoint an attorney under seal, and this is clearly the case under this section of the Act (*Faviell v. Eastern Counties Ry. Co.*, 2 Ex. 344; 6 Dow. & L. 54).

Who can bind company. In cases of emergency requiring immediate action, it will in some cases be presumed that a servant of the company on the spot has authority to enter into a contract on behalf of the company.

General manager and police inspector. Thus, a general manager and a police inspector, whose duty it was to proceed to the spot of an accident, have been held authorised to bind the company for medical services, hotel expenses, &c., of injured passengers (*Walker v. G. W. Ry. Co.*, L. R. 2 Ex. 228; 36 L. J. Ex. 123; *Langan v. G. W. Ry. Co.*, 30 L. T. N. S. 173).

Station-master. A station-master has been held not to have such authority (*Cox v. Midland Counties Ry. Co.*, 3 Ex. 268, a case which would probably not now be followed).

Contracts ultra vires. A contract entered into by a company for purposes wholly foreign to its constitution is void, and cannot be ratified by the shareholders (*Ashbury Railway Carriage & Iron Co. v. Riche*, L. R. 7 H. L. 653).

Upon the question of what matters are *ultra vires* of the company, see *ante*, note to section 65.

Conditions precedent to exercise of powers. Upon the question how far a person entering into a contract with a company is bound to inquire whether all the preliminaries required by the company's Acts have been performed so as to bind the company, the cases appear to be not easily reconcilable.

The general principle is laid down by Lord Hatherley, then V.-C., in *Fountain v. Carmarthen Ry. Co.*, 5 Eq. p. 322:—

8 Vict. c. 16,
s. 97.

"In the case of a registered joint stock company, all the world, of course, have notice of the general Act of Parliament, and of the special deed which has been registered pursuant to the provisions of the Act; and if there be anything to be done which can only be done by the directors under certain limited powers, the person who deals with the directors must see that those limited powers are not being exceeded.

Lord Hatherley's rule.

"If, on the other hand, as in the case of *Royal British Bank v. Turquand*, the directors have power and authority to bind the company, but certain preliminaries are required to be gone through on the part of the company before that power can be duly exercised, then the person contracting with the directors is not bound to see that all these preliminaries have been observed. He is entitled to presume that the directors are acting lawfully in what they do. This is the result of Lord Campbell's judgment in *Royal British Bank v. Turquand*." (See, too, *Bargate v. Shortridge*, 5 H. L. 297.)

Thus, the holder of a bond issued under the re-borrowing powers of the company is not bound to inquire whether a general meeting under section 39 of this Act has been held to confirm the re-borrowing (*Fountain v. Carmarthen Ry. Co.*, 5 Eq. 316; see, too, notes to sections 38, 39, ante).

Meeting.

On the other hand, in *D'Arcy v. Tamar Kit Hill, &c. Ry. Co.*, L. R. 2 Ex. 159, it was held that the holder of a bond sealed with the seal of the company could not maintain an action on it against the company where it was proved that the directors who had authorised the seal to be affixed had done so separately and privately, instead of acting formally as a board under sections 90—97 of the Companies Clauses Act.

D'Arcy's case considered.

This decision seems irreconcilable with *Fountain v. Carmarthen Ry. Co.*, and must probably give way to it (see, too, *In re Bonelli's Telegraph Co.*, *Collie's Claim*, 12 Eq. 246; *Mahoney v. East Holyford Mining Co.*, L. R. 6 H. L. 869).

Again, an innocent holder of negotiable securities which it is within the power of directors to issue is not bound to see that certain preliminaries on the part of the company which ought to have been gone through have been gone through (*In re Land Credit Co.*; *Ex parte Overend & Gurney*, 4 Ch. 460).

Negotiable securities informally issued.

So, again, where directors have power to bind the company on certain conditions, a person dealing with them may assume that those conditions have been fulfilled (*Royal British Bank v. Turquand*, 5 E. & B. 248; 6 E. & B. 327; *Totterdell v. Fareham Brick Co.*, L. R. 1 C. P. 674).

It would seem to be immaterial in such cases, notwithstanding dicta of the common law judges, that the company proves that the conditions were not in fact fulfilled (see cases *supra*).

So, too, a person dealing with the directors of a company may assume that they are directors properly appointed (*In re County Life Assurance Society*, 5 Ch. 288).

A company is not bound by a representation of law made by its agents (*Eaglesfield v. Marquis of Londonderry*, 4 Ch. D. 693; and see the judgment of the M. R. for the distinction between a representation of law and fact).

Representations of agents.

But a company is bound by the representations of fact of its agents acting within the scope of their authority.

This is clear where the representations are only erroneous and not fraudulent (*Eaglesfield v. Marquis of Londonderry*, 4 Ch. D. 693).

And it would seem that a company is liable to an action for damages in respect of a fraudulent misrepresentation of an agent where such representation is one which would fall within the scope of the agent's general or special authority, at any rate if the company profit by the representation (*Barwick v. London Joint Stock Bank*, L. R. 2 Ex. 259; *Swift v. Jewsbury*, L. R. 9 Q. B. 301; *Mackay v. Commercial Bank of New Brunswick*, L. R. 5 P. C. 394; *Swire v. Francis*, 3 App. C. 106; *Weir v. Barnett*, 3 Ex. D. 32; *Weir v. Ball*, 3 Ex. D. 238. See dicta to the contrary in *Western Bank of Scotland v. Addie*, L. R. 1 H. L. Sc. 145).

But a company is not liable for the fraud of directors or agents before its incorporation (*Western Bank of Scotland v. Addie*, L. R. 1 H. L. Sc. 145).

Fraud of agents before incorporation.

A person signing a promissory note "for the company" is not personally liable (*Linden v. Meisroe*, 2 H. & N. 293; 3 H. & N. 177; *Alexander v. Sizer*, L. R. 4 Ex. 102).

Personal liability on promissory note.

But directors signing a promissory note, though they describe themselves as directors of the company, and the company's seal is affixed, are personally liable on the note, if there is nothing to show that the directors are signing on behalf of the company (*Dutton v. Marsh*, L. R. 6 Q. B. 361; and see *M'Collin v. Gilpin*, 5 Q. B. D. 390; 6 ib. 516).

8 Vict. c. 16,
s. 87.

Warranty of
authority to
bind the
company.

Misrepresen-
tation of law.

Liability for
failing to pro-
cure proper
powers.

Borrowing
after powers
exhausted.

Fraudulent
prospectus.

Fraud of co-
director.

Specific per-
formance of
contracts.

Working
points and
signals.

Contract in
part per-
formed.

As to the liability of directors who have entered into contracts on behalf of a company without power to bind the company, the cases again present some difficulty (as to this, see the notes to section 38, *ante*).

It appears to be clear that directors are not liable for a misrepresentation or mistake in point of law.

Thus, a person lending money to a company on a statement that the company was not yet in a position to issue permanent debentures, but in the meantime issued legally common bonds, which were Lloyd's bonds, cannot make the directors personally liable (*Rashdall v. Ford*, 2 Eq. 750. See *Beattie v. Lord Ebury*, 7 Ch. 777; 7 H. L. 17).

On the other hand, directors who enter into contracts which they have power to make after certain preliminary steps have been taken, impliedly represent that those steps have been taken, and may be made personally liable if they have not perfected their powers (see *Collen v. Wright*, 8 E. & B. 647; *Richardson v. Williamson*, L. R. 6 Q. B. 276; *Cherry v. Colonial Bank of Australasia*, L. R. 3 P. C. 24. See, too, *Beattie v. Lord Ebury*, 7 Ch. 777; L. R. 7 H. L. 102; *Lakeman v. Mountstephen*, L. R. 7 H. L. 17).

Thus, directors borrowing money after the company's powers are exhausted, impliedly represent that they have power to borrow, and may be made personally liable (*Weeks v. Propert*, L. R. 8 C. P. 427; *Chapleo v. Brunswick Soc.*, 5 C. P. D. 331; 6 Q. B. D. 696; *Firbank's Executors v. Humphreys*, 18 Q. B. D. 64).

In the same way, where directors, who had no power to bind the company, stated to a bank that the manager had authority to draw cheques on account of the company, they were held personally liable to repay the bank (*Cherry v. Colonial Bank of Australasia*, L. R. 3 P. C. 24, where the account of the company was overdrawn to the knowledge of the directors).

A direction given by directors to the bankers of the company to honour cheques of the company drawn in a certain manner, there being at the time a balance at the bank in favour of the company, does not impose any liability upon the directors to repay cheques subsequently drawn upon the bank when the account of the company is overdrawn (*Beattie v. Lord Ebury*, L. R. 7 H. L. 102).

Directors issuing a fraudulent prospectus are liable to original allottees of shares, but not to subsequent purchasers, unless they can show a direct communication of the prospectus to them (*Peek v. Gurney*, L. R. 6 H. L. 377).

A director is not liable for a fraud (such as the issue of a fraudulent prospectus) committed by co-directors or by persons employed by the directors on behalf of the company, unless he has expressly or tacitly authorised its commission (*Weir v. Barnett*, 3 Ex. D. 32; *Cargill v. Bower*, 10 Ch. D. 502).

Thus, where directors authorised brokers to issue a prospectus for the purpose of borrowing on debentures, and the brokers issued a prospectus containing fraudulent statements, a director who was abroad at the time the prospectus was issued, and knew nothing of its contents, was held not liable (*Weir v. Bell*, 3 Ex. D. 238).

On the other hand, directors who were no parties to the prospectus were held liable, inasmuch as they issued the debentures after they had become aware of the misrepresentations in the prospectus (*Weir v. Barnett*, 3 Ex. D. 32; *Weir v. Bell*, 3 Ex. D. 238).

The law on this point is, perhaps, open to reconsideration, and it may be doubted whether the better opinion is not that a director who delegates his duty to another person is bound to see that no fraud is committed in carrying out the duty; so that, for instance, a director who authorises brokers to issue a prospectus would be liable for a fraudulent statement contained in the prospectus (see *Weir v. Bell*, 3 Ex. D. 238, judgment of Cotton, L. J., and *Peek v. Gurney*, L. R. 6 H. L. 377, p. 392, case of Mr. Barclay).

The court will not enforce specific performance of an executory contract involving continuous acts.

Thus, specific performance of a contract to construct a railway entered into between a company and a contractor will not, as a rule, be enforced; the remedy by damages in such a case is complete (*S. Wales Ry. Co. v. Wythes*, 1 K. & J. 186; 5 D. M. & G. 880).

Nor will a company be compelled to allow another company to run engines and carriages over their line, as this would involve ordering the company to work the points and signals (*Powell Duffryn Co. v. Taff Vale Ry. Co.*, 9 Ch. 331. See, too, *Blackett v. Bates*, 1 Ch. 117).

On the other hand, where the consideration has on one side been executed, the court will enforce the performance of the contract by the other party, though it may be necessary to order the carrying out of works and buildings.

Thus, if a landowner has withdrawn his opposition, or has sold land to the company upon the faith of an agreement by the company to execute certain works,

specific performance of the contract will be decreed (*Price v. Corp'n. of Penzance*, 4 H. 506; *Storer v. G. W. Ry. Co.*, 3 R. C. 106; 2 Y. & C. Ch. 48).

8 Vict. c. 18,
s. 87.

Even if the work to be done is not specifically within the powers of the company, it would lie upon the company resisting specific performance to show clearly that it is *ultra vires* (*Wilson v. Furness Ry. Co.*, 9 Eq. 28).

And in such a case an inquiry will be directed, if necessary, as to what works should be executed within the meaning of the contract (*Sanderson v. Cockermouth & Workington Ry. Co.*, 19 Beav. 497; 2 H. & T. 327; *Lytton v. Gt. N. Ry. Co.*, 2 K. & J. 394).

Inquiry as to
necessary
works.

It has been held that an agreement to make a siding on land to be supplied by the landowner may be enforced against the company by the landowner (*Greene v. W. Cheshire Ry. Co.*, 13 Eq. 44; *Todd v. Midland G. W. Ry. Co.*, 9 L. R. Ir. 85. See *Firth v. Midland Ry. Co.*, 20 Eq. 100; 44 L. J. Ch. 313; and *Dowling v. Pontypool, Caerleon & Newport Ry. Co.*, 18 Eq. 714; 43 L. J. Ch. 761).

Agreement
to make
siding en-
forced.

Where a company agreed to make such accommodation works as the landowner's agent should before a certain date notify in writing, and no notification was given, the court refused to order the company to make necessary and proper accommodation works (*Earl of Darnley v. L. C. & D. Ry. Co.*, 13 W. R. 824; 3 D. J. & S. 24; L. R. 2 H. L. 43).

Where, under an agreement to build a first-class station, a station has been built and used for many years, an action cannot afterwards be brought to enforce the building of a more commodious station (*Hood v. N. E. Ry. Co.*, 5 Ch. 525).

Agreement to
build a
station.

An agreement to devote a portion of the land taken from a landowner to the purposes of a first-class station for taking up and setting down passengers, must be construed with reference to the circumstances existing at the time of the agreement, and will entitle the landowner to have all trains stopped which stop at any other stations between the termini of the original line, except express, special and mail trains running along the line after it has become part of an extended system (*Hood v. N. E. Ry. Co.*, 5 Ch. 525).

The court will not grant specific performance of an agreement to build a station where the nature of the station is not defined and there are no stipulations as to its use, but will grant an inquiry as to damages, which will be assessed on the principle of making every reasonable presumption as to the advantages that would have accrued from the performance of the agreement (*Wilson v. Northampton, &c. Ry. Co.*, 9 Ch. 279).

Specific performance of an agreement to build a station has been decreed against a company which, under an Act of Parliament, had succeeded to the company which entered into the agreement (*Churchill v. Salisbury & Dorset Ry. Co.*, 32 L. T. N. S. 217).

It is no answer to an action for specific performance of an agreement to carry out certain works in a particular way, where damages are not an adequate compensation, that the public will be put to inconvenience by delay in the traffic while the works are being carried out (*Raphael v. Thames Valley Ry. Co.*, 2 Ch. 147).

Public incon-
venience.

Nor is it an answer in such a case that the works agreed upon cannot be carried out without taking lands which the company have no power to take. The company will be directed to perform the agreement, and, if they fail to do so, they will be compelled to close their line (*A.-G. v. Mid-Kent Ry. Co.*, 3 Ch. 100).

The court will enforce a covenant to stop trains at a particular station (*Rigby v. Gt. W. Ry. Co.*, 2 Ph. 44; 10 Jur. 488, 531; 14 M. & W. 811; 4 R. C. 175, 190, 491).

Covenant to
stop trains.

As to the meaning of "ordinary" and "passenger" train used in such a covenant, see *Turner v. L. & S. W. Ry. Co.*, 43 L. J. Ch. 430; 17 Eq. 561; *Burnett v. Gt. North of Scotland Ry. Co.*, 10 App. C. 147.

Under a covenant to stop trains, other than trains not under the control of the company, for ten minutes at a station for refreshment, the company will not be compelled to stop a train which the postmaster-general, proceeding under statutory powers, requires the company to run, carrying mails and stopping at the station only five minutes, though the company may attach passenger carriages to such train (*Phillips v. Gt. W. Ry. Co.*, 7 Ch. 409).

The court will not restrain a company from determining an agreement to employ contractors to perform personal services for the company, such as collecting and delivering goods at the stations (*Johnson v. Shrewsbury, &c. Ry. Co.*, 3 D. M. & G. 194; *Horne v. L. & N. W. Ry. Co.*, 10 W. R. 170).

Agreement
for personal
service.

The cases upon the subject of building contracts are not within the scope of this work, but it may be useful here to refer to some of the more recent decisions.

Building con-
tracts.

Where a person invites tenders for certain works to be carried out in accordance with plans and specifications which are supplied to the persons tendering, there is no warranty that the work can be carried out in accordance with the specification (*Thorn v. Mayor of London*, 1 App. C. 120).

Warranty
that the works
can be carried
out according
to the speci-
fications.

8 Viet. c. 16,
s. 97.

Contract for
entire work.

Approval of
architect.

What raises
case of *mala
fides*.

Action for
want of skill.

Action for
fraud.

Parol varia-
tion of con-
tract.

Penalties for
non-comple-
tion.

Nor is there any warranty that the quantities taken out by the employer's architect are correct; the builder cannot, therefore, recover more than the contract price if the quantities are understated (*Scriener v. Pask*, L. R. 1 C. P. 715).

A person who has contracted to do an entire work for a specific sum can recover nothing till the whole is completed; therefore, if before completion the performance of the contract becomes impossible by reason of the destruction by fire of the premises upon which the works are to be done, the contractor cannot recover in respect of that portion of the work which he has completed (*Appleby v. Myers*, L. R. 2 C. P. 651).

Upon similar principles, where a complete work is to be done to the satisfaction of the architect, upon whose approval payment is to be made, the builder can recover neither upon the contract nor in an action for work done until the architect has certified his approval (*Munro v. Butt*, 8 E. & B. 738; *Richardson v. Mahon*, 4 L. R. Ir. 486).

Where the certificate of the engineer as to the work done and the sums payable is to be final, it cannot be impeached, except on the ground of fraud, and no action can be maintained till the certificate is given (*Sharpe v. San Paulo Ry. Co.*, 8 Ch. 597; *Baron de Worms v. Mellier*, 16 Eq. 554; *Richardson v. Mahon*, 4 L. R. Ir. 486).

And the mere circumstance that the contract gives the parties an appeal to arbitration from the determination of the engineer does not give the court jurisdiction (*Sharpe v. San Paulo Ry. Co.*, *supra*).

If the engineer's certificate is made conclusive, it is binding on both parties to the contract, and no complaint can be made by the company for defects discovered after it has been given (*Dunaberg & Witipsch Ry. Co. v. Hopkins*, 36 L. T. N. S. 733).

In cases where the person who is made sole judge of the performance of the contract is in the permanent employ of the company, it will be more difficult for the contractor to make out a case of unfairness than in the case of a contract with a private person where an architect or other professional man is employed simply for the particular job. In the former case the contractor has agreed to accept as judge a person whom he knows to be biassed; in the latter case no such knowledge can be imputed to him.

Thus, where the person whose certificate is required is the engineer of the company, the fact that the engineer is also a shareholder in the company does not disqualify him (*Ranger v. Gt. W. Ry. Co.*, 6 H. L. 72. See *Hill v. S. Staffordshire Ry. Co.*, 11 Jur. N. S. 192).

On the other hand, if it is shown that the architect is the agent of a private employer, and has entered into an agreement with him that the work shall be done for a certain sum, including his commission, this is sufficient fraud to entitle the contractor to disregard his decision (*Kimberley v. Dick*, 13 Eq. 1, where most of the cases on this subject are cited. See, too, *McIntosh v. Gt. W. Ry. Co.*, 2 H. & T. 250; *Waring v. Manchester, Sheffield & Lincoln Ry. Co.*, 7 H. 482; 2 H. & T. 239).

Where the certificate of an architect is made final with regard to the amount of work done, and the duties of the architect involve the exercise of professional judgment and skill, no action lies against him for want of due care and skill in drawing up his certificate, there being no charge of fraud (*Stevenson v. Watson*, 4 C. P. D. 148).

But perhaps an action might lie for want of care and skill if the duties were merely ministerial, such as to make certain arithmetical calculations (*ib.*).

An action may be maintained either against the contractor or the architect, if they act fraudulently and in collusion (*Batterbury v. Vyse*, 2 H. & C. 42; *Ludbrook v. Barrett*, 36 L. T. N. S. 616. See, however, *Murphy v. Bower*, Ir. R. 2 C. L. 506).

A contract under seal between a company and a contractor to do certain works for a certain sum cannot be varied by a mere verbal agreement between the engineer of the company and the contractor (*Sharpe v. San Paulo Ry. Co.*, 8 Ch. 597).

Where the contract provides that no additions shall be made without a written order from the employer's engineer, the engineer's certificate certifying that extra work has been done is not an order within the meaning of the contract (*Tharrie Sulphur & Copper Co. v. McElroy*, 3 App. C. 1040).

If a contractor undertakes within a given time to finish certain works, and any extra works that may be ordered, or to pay a penalty in default, he is bound to pay the penalty if the works and any extra works within the meaning of the contract are not completed, though it may be impossible to complete the extra work within the time (*Jones v. St. John's College*, L. R. 6 Q. B. 115).

On the other hand, where there is an agreement to finish certain works within a given time, or to pay a penalty in default, and additional works are ordered of such a nature that it becomes impossible to finish the original works within the

stipulated time, the agreement becomes one to finish the works within a reasonable time (*Courtney v. Waterford & Central Ireland Ry. Co.*, 4 L. R. Ir. 11).

8 Vict. c. 16,
s. 98.

Where the contract provides that if the contractor does not use due diligence in completing the works, the landowner may determine the contract, and take possession of the plant, the landowner will not be entitled to take advantage of this clause if the delay in completing the works is caused by himself. The architect may, by proper words, be constituted final judge of what additional time should be allowed, whether on account of additional works or on account of breaches of contract by the landowner, or even by reason of delay on his own part, but such a construction of the contract will not be adopted without clear words to that effect (*Roberts v. Bury Commissioners*, L. R. 5 C. P. 310; see *Lawson v. Wallasey Local Board*, 11 Q. B. D. 229).

Forfeiture of
plant and
materials.

An agreement that the building materials brought by the builder upon the land shall become the property of the landowner passes the property at law in materials brought on to the land, and does not require registration under the Bills of Sale Acts, 1855 and 1878 (*Brown v. Bateman*, L. R. 2 C. P. 272; *Blake v. Izard*, 16 W. R. 108; *Reeves v. Barlow*, 12 Q. B. D. 436; see *Seath v. Moore*, 11 App. C. 350).

Materials to
be property of
landowners.

As to the effect of the engineers certifying for materials brought upon the land, see *Banbury, &c. Ry. Co. v. Daniel*, 33 W. R. 321; 54 L. J. Ch. 265.

Engineer's
certificate.

A provision forfeiting building materials upon the bankruptcy of the builder, or otherwise controlling the user after bankruptcy of property then vested in the bankrupt, is void (*Ex parte Jay, In re Harrison*, 14 Ch. D. 19; *Ex parte Barter*, 26 Ch. D. 510; see *Ex parte Meads, Re Harrison*, 41 L. T. 560).

Forfeiture of
materials on
bankruptcy.

A provision enabling the landowner, upon default by the builder, to enter and forfeit the building materials is not a bill of sale within the Act of 1854, and such a provision may be put in force against the trustee in bankruptcy (*Ex parte Newitt, In re Garrud*, 16 Ch. D. 522; see *In re Waugh, Ex parte Dickin*, 4 Ch. D. 524).

Licence to
seize not a
bill of sale.

A clause providing that the employer may determine the contract and forfeit the plant, &c., if the works are not proceeded with at the rate of progress required by the engineer, can, it would seem, only be put in force during the time limited for the completion of the works (*Walker v. L. & N. W. Ry. Co.*, 1 C. P. D. 518; see *Mohan v. Dundalk, &c. Ry. Co.*, 6 L. R. Ir. 477).

Power to use
plant.

A provision authorizing the employer in the event of default by the contractor to use the plant and materials, does not make the plant and materials the property of the employer (*Garrett v. Salisbury & Dorset Junction Ry. Co.*, 2 Eq. 358. See too *In re Winter, Ex parte Bolland*, 8 Ch. D. 225).

Upon the construction of a contract giving up a lien upon the plant created by an earlier contract, see *Hunt v. S. E. Ry. Co.*, 45 L. J. C. P. 87.

Liquidated
damages and
penalty.

Where a sum is made payable as damages in the event of non-performance of any of a great number of stipulations of a contract, of varying degrees of importance, the sum is a penalty, and is not recoverable.

But a sum may be fixed by the contract as liquidated damages for the breach of any particular stipulation, and may be recovered as damages (*In re Newman, Ex parte Copper*, 4 Ch. D. 724, and cases there cited; *Wallis v. Smith*, 21 Ch. D. 243; *Lord Elphinstone v. Monkland Iron & Coal Co.*, 11 App. C. 332).

Proceedings
to be entered
in a book,
and to be
evidence.

98. The directors shall cause notes, minutes, or copies as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed (a) by the chairman of such meeting; and such entry, so signed, shall be received as evidence* in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

* [As to the
admission in
evidence of
records of the
company, see
8 & 9 Vict.
c. 113, post.]

(a) The minutes need not be signed on the day on which they are entered. T. I

Signature of
minutes.

**8 Vict. c. 16,
ss. 99—102.**

sufficient that they should be signed by the person who was the chairman of the meeting, and they may be signed or signed as confirmed at a subsequent meeting (*Southampton Dock Co. v. Richards*, 1 M. & Gr. 448; *London & Brighton Ry. Co. v. Fairclough*, 2 M. & Gr. 674; *W. London Ry. Co. v. Bernard*, 3 R. C. 649).

And where a meeting for a particular purpose is adjourned, and the minutes of the adjourned meeting only are signed by chairman, the whole of the minutes are admissible in evidence (*Miles v. Bough*, 3 Q. B. 845; *Inglis v. Gt. N. Ry.*, 16 Jur. 895).

**Informalities
in appoint-
ment of
directors not
to invalidate
proceedings.**

99. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

**Directors not
to be person-
ally liable.**

100. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any.

**Indemnity of
directors.**

Auditors.

**Election of
auditors.**

And with respect to the appointment and duties of auditors, be it enacted as follows:

101. Except where by the special Act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special Act, elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified nor having resigned, shall continue to be an auditor until another be elected in his stead.

**Qualification
of auditors.**

102. Where no other qualification shall be prescribed by the

special Act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

8 Vict. c. 16,
ss. 108-109.

[By 31 & 32
Vict. c. 119,
ss. 11, 12, the
provisions
with regard
to auditors
are amended.]
Rotation of
auditors.

103. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority,) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

104. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

Vacancies in
office of
auditor.

105. The provision of this Act respecting the failure of any ordinary meeting at which directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed.

Failure of
meeting to
elect auditor.

106. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet,* fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

Delivery of
balance
sheet, &c. by
directors to
auditors.

* [By 31 & 32
Vict. c. 119,
ss. 3, 5, the
form of the
accounts and
balance sheet
is prescribed.]
Duty of audi-
tors.

107. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Powers of
auditors.

108. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

One auditor may appoint an accountant without the consent of his co-auditor (*Steele v. Sutton Gas Co.*, 12 Q. B. D. 68).

And with respect to the accountability of the officers of the company, be it enacted as follows:—

Accountability
of officers.

109. Before any person intrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

Security to be
taken from
officers in-
trusted with
money.

Upon the construction of statutes providing that bonds entered into with an old

§ Vict. c. 16, company shall be valid in favour of a new or amalgamated company, see *London & Brighton Ry. Co. v. Goodwin*, 3 Ex. 320; *Eastern Union Ry. Co. v. Cochrane*, 9 Ex. 197.

Discharge of surety. Upon the question of the discharge of a surety by an alteration of the contract between the employer and his servant, it may be useful to recall the following propositions:—

Guarantee of particular service. If the surety has notice of the terms of the contract between the employer and his servant, and guarantees the performance of that contract, any alteration of the terms of the agreement, whether affecting the position of the surety or not, will discharge him (*Whetcher v. Hall*, 5 B. & Cr. 269; *N. W. Ry. Co. v. Whinray*, 10 Ex. 77. See *Sanderson v. Aston*, L. R. 8 Ex. 73).

Guarantee of service generally. If the surety guarantees not a particular contract but generally, the performance by a servant or agent of the duties of a particular office, the surety is discharged if the duties are altered so as materially to increase the surety's risk (*Bonar v. Macdonald*, 3 H. L. C. 226; *Pybus v. Smith*, 6 E. & B. 902; *Malling Union v. Graham*, L. R. 5 C. P. 201. See *Stewart v. M'Kean*, 10 Ex. 675).

Guarantee for a year. A surety who guarantees the performance by a servant of the duties of his office, may show that the servant was appointed for a year only, and he will not be liable for the misconduct of the servant if his employment is continued (*Kitson v. Julian*, 4 E. & B. 854).

Effect of appointment to additional office. The mere fact that the servant is appointed to an additional office under the same employer will not discharge the surety, though the servant's temptations to dishonesty are increased (*Skillett v. Fletcher*, L. R. 1 C. P. 217; 2 *ib.* 468. See *Harrison v. Seymour*, L. R. 1 C. P. 518).

If the surety guarantees the performance of the duties of several offices, a material alteration in one of them will not release him as to the others (*ib.*).

Continuance of employment after breach of duty. If the employer discovers that the servant has been guilty of a breach of duty which would justify the employer in discharging him, and the employer continues his employment without the knowledge and consent of the surety, the surety is discharged (*Phillips v. Foxall*, L. R. 7 Q. B. 666; *Sanderson v. Aston*, L. R. 8 Ex. 73).

Officers to account, on demand.

110. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all monies received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such monies shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing from him upon the balance of such accounts.

Summary remedy against parties failing to account.

111. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof, when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last

known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any monies of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

8 Vict. c. 18,
ss. 112-115.

112. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Officers refusing to deliver up documents, &c., to be imprisoned.

113. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

Where officer about to abscond a warrant may be issued in the first instance.

114. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

Sureties not to be discharged.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:

115. The directors shall cause full and true accounts to be kept

Accounts.

Accounts to be kept.

8 Vict. c. 16,
ss. 116-118.

[See the provisions of 31 & 32 Vict. c. 119, ss. 3 *et seq.*, as to accounts.]
Inspection of accounts.

of all sums of money received or expended on account of the company by the directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid.

It has been held, under similar provisions in a special Act, that a shareholder who omits to inspect the books in the manner provided by the Act cannot compel the company to allow him to inspect the books for the purpose of discovering a defence to an action for calls (*Birmingham, Bristol & Thames Junction Ry. Co. v. White*, 1 Q. B. 282).

The right to inspection in any action or proceeding is, however, now governed by Order XXXI. rule 12 *et seq.*

Under rule 12 the court has no discretion to refuse to allow the inspection of documents by a party to an action, unless the documents are privileged (*Bustros v. White*, 1 Q. B. D. 423).

Common order for inspection.

The common order for inspection includes the plaintiff, his solicitor and agents, which would appear to be limited to a general agent (*Draper v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 3 D. F. & J. 23; 9 W. R. 215).

Inspection by witness.

Inspection by witnesses will only be allowed if a special case is made out.

Thus, an accountant, or a person familiar with accounts, will be allowed to inspect if the action involves complicated accounts, but not otherwise (*Swansea Vale Ry. Co. v. Budd*, 2 Eq. 274; *Lindsay v. Gladstone*, 9 Eq. 132).

So an engineer will be allowed to inspect engineering plans and sections material for the purposes of the action (*Swansea Vale Ry. Co. v. Budd*, 2 Eq. 274).

Inspection by auditor of rival company.

An accountant will not be allowed to inspect the books of a company if he is also the auditor of a rival company (*Draper v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 3 D. F. & J. 23; 9 W. R. 215).

Inspection of documents alleged to be forged.

If a case of forgery is set up, inspection by experts of the documents alleged to be forged will be allowed (*Groves v. G.*, Kay, App. XIX.; *Boyd v. Petrie*, 3 Ch. 818).

A person applying for inspection must substantially follow the form of notice No. 9, App. B. He cannot give notice to inspect on the following morning (*In re Credit Co.*, 11 Ch. D. 566).

Form of notice to inspect.

Books to be balanced.

116. The books of the company shall be balanced at the prescribed periods, and if no periods be prescribed, fourteen days at least before each ordinary meeting; and forthwith on the books being so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half-year; and previously to each ordinary meeting such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Inspection of accounts by shareholders at stated times.

117. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company; but the shareholders shall not be entitled at any time except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Balance sheet to be pro-

118. The directors shall produce to the shareholders assembled

at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

8 Vict. c. 16,
ss. 119-121.

duced at the
meeting.

119. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

Book-keeper
to allow in-
spection of
the accounts
at the ap-
pointed times.

And with respect to the making of dividends, be it enacted as follows:

Dividends.

120. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Previously to
declaration of
dividends, a
scheme to be
prepared.
[By 30 & 31
Vict. c. 127,
s. 30, no
dividend is to
be declared
till the audi-
tors have
certified the
half-yearly
accounts.]

A claim by a shareholder against the company for his dividends is not a claim by a *cestui que trust* against his trustee (*Smith v. Cork & Bandon Ry. Co.*, 1 R. 5 Eq. 65).

Company not
trustee of
dividends.

Money borrowed for the purpose of completing the line is not payable out of profits, but debts incurred for rails, stations, and the like, are payable out of profits (*Corry v. London & Enniskillen Ry. Co.*, 27 B. 263).

What may be
applied to pay
dividends.

It seems dividends cannot be paid out of borrowed capital, nor can interest on debentures be charged to capital account (*Bloxam v. Metropolitan Ry. Co.*, 3 Ch. 337).

Borrowed
capital.

As to whether a sum paid by contractors as a penalty, but which may in certain events be returnable to them, can be applied to payment of a dividend, see *Bloxam v. Metropolitan Ry. Co.*, 3 Ch. 337; *Salisbury v. Same*, 38 L. J. Ch. 249; 20 L. T. N. S. 72; 18 W. R. 974.

So as to whether office expenses can be charged to capital account (*ib.*).

As to whether where capital for an extension line is raised as part of the general capital, debts incurred for the extension line before it yields income can be charged to the general capital account (*Bloxam v. Metropolitan Ry. Co.*, 3 Ch. 337).

Debts in-
curred for
extension
line.

Where sums chargeable to capital account were paid out of revenue, it was held on the construction of the special Acts that shares which the directors had power to issue but which could only have been sold at a discount, could not be issued at par in lieu of the dividend which might have been paid if the revenue had not been diverted (*Hook v. Gt. W. Ry. Co.*, 3 Ch. 262).

An action for damages has been held to lie by a preference shareholder against the company for paying dividends to shareholders ranking *pari passu* with himself and omitting to declare a dividend on his shares (*Coey v. Belfast & County Down Ry. Co.*, 1 R. 2 C. L. 112).

121. The company shall not make any dividend whereby their capital stock will be in any degree reduced: Provided always, that

Dividend not
to be made so
as to reduce
capital.

8 Vict. c. 16, ss. 122-123. the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Power to directors to set apart a fund for contingencies.

122. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

Dividend not to be paid unless all calls paid.

123. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Bye Laws.

Power to make bye laws for the officers of the company.

And with respect to the making of bye laws, be it enacted as follows:

124. It shall be lawful for the company from time to time to make such bye laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye laws, and make others, providing such bye laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such bye laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye laws shall be given to every officer and servant of the company affected thereby.

Fines for breach of such bye laws.

125. It shall be lawful for the company, by such bye laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye laws, as the company think fit, not exceeding five pounds for any one offence.

Bye laws to be so framed as that penalties may be mitigated.

126. All the bye laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such justice shall think fit.

Evidence of bye laws.

127. The production of a written or printed copy of the bye laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye laws in all cases of prosecution under the same.

Arbitration.

Appointment of arbitrator

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

128. When any dispute authorized or directed by this or the

special Act, or any Act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

8 Viet. c. 16,
ss. 129-131.

when questions are to be determined by arbitration.
[See the Railway Companies Arbitration Act, 1859, 22 & 23 Viet. c. 59.]

129. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Vacancy of arbitrator to be supplied.

130. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

131. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the board of trade, if they think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

Where a railway company is not a party to the arbitration, an umpire may be appointed by a judge's order under the Common Law Procedure Act, 1854, sect. 12 (*Re Lord*, 1 K. & J. 90; *Re Anglo-Italian Bank & De Rosaz*, L. R. 2 Q. B. 452;

8 Vict. c. 18, ss. 132-137. *De Rosaz v. Anglo-Italian Bank*, L. R. 4 Q. B. 462. See *In re Met. Building Act*, *Ex parte McBryde*, 4 Ch. D. 201).

Power of arbitrators to call for books, &c.

132. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Costs to be in the discretion of the arbitrators.

133. Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Submission to arbitration to be made rule of court.

134. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Notices.

Service of notices upon company.

And with respect to the giving of notices, be it enacted as follows:

135. Any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

See the notes to sect. 134 of the Lands Clauses Act, *post*.

This section has been held to apply to the service of a declaration in ejectment upon a railway company (*Doe d. Bayes v. Roe*, 16 M. & W. 98; 4 D. & L. 311).

Where the Act of a railway company, having its head office in Scotland and only six miles of its line in England, incorporated the Scotch and English Companies Clauses Act, service upon the secretary while attending a meeting in London was held good (*Wilson v. Caledonian Ry. Co.*, 5 Ex. 822).

Service on a director is valid only if there is no secretary (*Lawrenson v. Dublin Met. Junction Ry. Co.*, W. N. 1877, 149).

Service by company on shareholders.

136. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post office.

Notices to joint proprietors of shares.

137. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

138. All notices required by this or the special Act, or any Act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

**8 Vict. c. 16,
ss. 138-142.**

Notices by
advertisement.

Where a company had its chief place of business in Swansea, advertisement in a London paper not shown to circulate in Swansea was held insufficient (*Swansea Dock Co. v. Lervien*, 20 L. J. Ex. 417).

139. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Authentica-
tion of
notices.

140. And be it enacted, that if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company.

Proof of debts
in bank-
ruptcy.

141. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or by virtue of any power or authority thereby given, and if before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit; and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of
amends.

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows:

142. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom

*Recovery of
damages and
penalties.*

Provision for
damages not
otherwise
provided for.

8 Vict. c. 16, the same shall have been ordered to be paid, or either of them, on
ss. 143-145. application, shall issue their or his warrant accordingly.

Distress
against the
treasurer.

143. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Method of
proceeding
before justices
in questions
of damages,
&c.

144. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of
penalties.

145. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any bye law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

146. If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any bye law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

8 Vict. c. 16,
ss. 146-149.

Penalty for
defacing
boards used
for such
publication.

147. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode: and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them, and upon proof of the offence, either by the confession of the party complained against or upon the oath of one credible witness or more it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to
be summarily
recovered
before two
justices.

*Repealed as
regards Eng-
land from the
words "and
on complaint"
to the end of
the section
(Summary
Jurisdiction
Act, 47 & 48
Vict. c. 43).*

148. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Penalties may
be levied by
distress.

*Repealed as
regards Eng-
land (47 & 48
Vict. c. 43).*

149. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture, and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall, by warrant,

Imprisonment
in default of
distress.

*Repealed as
regards Eng-
land (47 & 48
Vict. c. 43).*

8 Vict. c. 16,
ss. 150-154.

cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

Distress how
to be levied.

150. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned on demand, to the party whose goods shall have been distrained.

Distress not
unlawful for
want of form.

151. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application
of penalties.

152. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

The section ended with a provision for the application of the penalty when the place where the offence was committed is extra-parochial. This provision is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Penalties to
be sued for
within six
months.

*Repealed as
regards
England
(47 & 48 Vict.
c. 43).*

153. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Damage to be
made good in
addition to
penalty.

154. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted, and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

155. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

8 Vict. c. 16,
ss. 155-159.

Penalty on
witnesses
making
default.

This section is repealed, as regards England, by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), so far as relates to any matter to which the Summary Jurisdiction Acts apply.

156. It shall be lawful for any officer or agent of the company, and all person (*sic*) called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Transient
offenders.

157. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (G.) to this Act annexed.

Form of
conviction.

Repealed as
regards

England
(47 & 48 Vict.
c. 43).

158. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Proceedings
not to be
quashed for
want of form.

See the notes to section 145 of the Lands Clauses Act, 1845, *post*.

159. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the General Quarter Sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned

Appeal.

Parties
allowed to
appeal to
quarter
sessions.

Repealed
as regards
England from
the words "for
the county,"
to the end of
the section
(47 & 48 Vict.
c. 43).

**8 Vict. c. 16,
ss. 160-164.** duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make
such order as
they think
reasonable.

160. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

*Access to
special Act.*

Copies of
special Act to
be kept and
deposited, and
allowed to be
inspected.

And with respect to the provisions to be made for affording access to the special Act by all parties interested, be it enacted as follows:

161. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to her majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special Act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

**7 W. 4 &
1 Vict. c. 83.**

Penalty on
company
failing to keep
or deposit
such copies.

162. If the company shall fail to keep or deposit as herein-before mentioned any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to ex-
tend to Scot-
land.

163. And be it enacted, that this Act shall not extend to Scotland.

For recover-
ing calls

164. Provided always, and be it enacted, that if any shareholder

residing in Scotland shall fail to pay the amount of any call made upon him by the company in respect of any share held by him, it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by "The Companies Clauses Consolidation (Scotland) Act, 1845," provided in regard to shareholders of any company in Scotland.

8 Vict. c. 16,
s. 164.

against share-
holders resid-
ing in Scot-
land.

[8 Vict. c. 7.]

[165 is repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.]

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.)

Form of Certificate of Share.

"The Company."

Number

THIS is to certify, that *A.B.* of is the proprietor of the share number of "The Company" subject to the regulations of the said company. Given under the common seal of the said company, the day of in the year of our Lord .

SCHEDULE (B.)

Form of Transfer of Shares or Stock.

I of in consideration of the sum of paid to me by of do hereby transfer to the said share [or shares], numbered in the undertaking called "The Company" [or pounds consolidated stock in the undertaking called "The Company," standing (or part of the stock standing) in my name in the books of the company], to hold unto the said his executors, administrators, and assigns [or successors and assigns], subject to the several conditions on which I held the same at the time of the execution hereof; and I the said do hereby agree to take the said share [or shares] [or stock], subject to the same conditions. As witness our hands and seals, the day of .

The Companies Clauses Act, 1845.

SCHEDULE (C.)

Form of Mortgage Deed.

“The _____ Company.”

Mortgage, number _____ £

By virtue of [*here name the special Act*], we, “The _____ Company,” in consideration of the sum of _____ pounds paid to us by *A.B.* of _____ do assign unto the said *A.B.*, his executors, administrators, and assigns, the said undertaking [*and (in case such loan shall be in anticipation of the capital authorized to be raised) all future calls on shareholders*], and all the tolls and sums of money arising by virtue of the said Act, and all the estate, right, title, and interest of the company in the same, to hold unto the said *A.B.*, his executors, administrators, and assigns, until the said sum of _____ pounds, together with interest for the same at the rate of _____ for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of _____ years from the date hereof (*in case any period be agreed upon for that purpose*)], [at _____ or any place of payment other than the principal office of the company]. Given under our common seal, this _____ day of _____ in the year of our Lord _____.

SCHEDULE (D.)

Form of Bond.

“The _____ Company.”

Bond, number _____ £

By virtue of [*here name the special Act*], we, “The _____ Company,” in consideration of the sum of _____ pounds to us in hand paid by *A.B.* of _____ do bind ourselves and our successors unto the said *A.B.*, his executors, administrators, and assigns, in the penal sum of _____ pounds.

The condition of the above obligation is such, that if the said company shall pay to the said *A.B.*, his executors, administrators, or assigns [at _____ (*in case any other place of payment than the principal office of the company be intended*)], on the _____ day of _____ which will be in the year one thousand eight hundred and _____, the principal sum of _____ pounds, together with interest for the same at the rate of _____ pounds per centum per annum, payable half-yearly on the _____ day of _____ and _____ day of _____ then the above-written obligation is to become void, otherwise to remain in full force. Given under our common seal, this _____ day of _____ one thousand eight hundred and _____.

SCHEDULE (E.)

Form of Transfer of Mortgage or Bond.

I *A.B.* of in consideration of the sum of paid to me
by *G.H.*, of do hereby transfer to the said *G.H.*, his executors,
administrators, and assigns, a certain bond, [*or mortgage*] number
made by "The Company" to bearing date the
day of for securing the sum of and
interest [*or, if such transfer be by endorsement, the within security,*]
and all my right, estate, and interest in and to the money thereby
secured [*and if the transfer be of a mortgage and in and to the tolls,*
money, and property thereby assigned.] In witness whereof I
have hereunto set my hand and seal this day of one
thousand eight hundred and .

SCHEDULE (F.)

Form of Proxy.

A.B. one of the proprietors of "The Company,"
doth hereby appoint *C.D.* of to be the proxy of the said *A.B.*,
in his absence to vote in his name upon any matter relating to the
undertaking proposed at the meeting of the proprietors of the said
company to be held on the day of next, in such manner
as he the said *C.D.* doth think proper. In witness whereof the
said *A.B.* hath hereunto set his hand [*or if a corporation, say, the*
common seal of the corporation], the day of one thousand
eight hundred and .

SCHEDULE (G.)

Form of Conviction.

to wit.

BE it remembered, that on the day of in the year
of our Lord *A.B.* is convicted before us *C., D.*, two of her
majesty's justices of the peace for the county of [*here describe*
the offence generally, and the time and place when and where committed],
contrary to the [*here name the special Act*]. Given under our hands
and seals, the day and year first above written.

C.
D.

Repealed as regards England by Summary Jurisdiction Act, 1884 (47 & 48 Vict.
c. 43).

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

8 VICT. c. 18.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public Nature. [8th May, 1845.]

8 Vict. c. 18,
s. 1.

Act to apply
to all under-
takings
authorized by
Acts hereafter
to be passed.

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.

Incorpora-
tion.

It has been held that the Lands Clauses Consolidation Act, 1845, was not to be considered incorporated in a private Act passed to enable the Westminster Improvement Commissioners to give effect to a lease, but not authorizing the acquisition of land (*Wale v. Westminster Palace Hotel Co.*, 8 C. B. N. S. 276; 7 Jur. N. S. 28).

An improvement Act incorporated the Lands Clauses Consolidation Act, 1845, so far as it was not inconsistent with the incorporating Act. The improvement Act authorized certain improvements without making any provision for compensation, it also authorized other improvements with provisions for compensation. It was held that the fact of provision for compensation being expressly made in the latter case, was not inconsistent with the intention that it should be given in the former case under the Lands Clauses Consolidation Act, 1845 (*R. v. St. Luke's*, L. R. 6 Q. B. 572).

Appointment
of special
arbitrator.

And in a case where the Lands Clauses Act was incorporated in similar terms, and a special tribunal was appointed for arbitrations in certain cases, but no provision was made for the costs of such arbitrations, it was held that section 34

applied, and that the claimant was entitled to costs under that section (*Sharpe v. Metropolitan District Ry. Co.*, 48 L. J. Q. B. 325; affd. H. L. 15 L. J. N. C. 69).

8 Viet. c. 18,
ss. 2, 3.

The Public Health Act, 1875, after incorporating the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, enacts that compensation "to be made under the provisions of this Act (except where the mode of determining the same is specially provided for)," shall be determined by arbitrators, in whose discretion the costs of the reference are to be. (Ss. 179, 180.) It has been held that this provision applies to matters arising under the Act other than the compulsory taking of land, so that a person whose land has been taken, is entitled to costs under the Lands Clauses Consolidation Act, though the award of the arbitrator is silent as to costs (*Ex parte Rayner*, 3 Q. B. D. 446).

See further as to the incorporation of the Lands Clauses Consolidation Acts, sections 5 and 80, *post*.

The Lands Clauses Act is to be interpreted by reference to the headings by which the various divisions of it are marked off (*Hammermith Ry. Co. v. Brand*, L. R. 4 H. L. 171; *Eastern Counties & London & Blackwall Ry. Cos. v. Marriage*, 9 H. L. C. 32).

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

Interpreta-
tions in this
Act:
"Special
Act:"
"Pre-
scribed:"

"The
works:"

"Promoters
of the under-
taking."

3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Interpreta-
tions in this
and the
special Act:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Number:

Words importing the masculine gender only shall include females:

Gender:

The word "lands" (a) shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"Lands:"

The word "lease" shall include an agreement for a lease:

"Lease:"

The word "month" shall mean calendar month:

"Month:"

The expression "superior courts" shall mean her majesty's superior courts of record at Westminster or Dublin, as the case may require:

"Superior
courts:"

8 Vict. c. 18,
s. 3.

"Oath:"

The word "oath" shall include affirmation in the case of quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"The
sheriff:"

The word "sheriff" (b) shall include undersheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate (c); and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"The clerk of
the peace:"

"Justices:"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested (d) in such matter; and where any matter shall be authorized or required to be done by two justices (e), the expression "two justices" shall be understood to mean two justices assembled and acting together:

"Two
justices:"

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"Owner:"

"The bank."

The expression "the bank" shall mean the bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.

Easement.

(a) This definition includes easements. But a railway company cannot acquire an easement unless specially authorized to do so by the special Act. Section 18 and the following sections of the Lands Clauses Act do not give this power (*Pinehis v. London and Blackwall Ry. Co.*, 5 De G. Mc. & G. 851; and see *In re Metro-*

politan District Ry. Co. & Cosh, 13 Ch. D. 607, at p. 616; *G. W. Ry. Co. v. Swindon, &c. Ry. Co.*, 22 Ch. D. 677; 9 App. C. 787; *Hill v. Midland Ry. Co.*, 21 Ch. D. 143). 8 Vict. c. 18, ss. 4, 5.

(b) Throughout the enactments in this Act relating to the reference to a jury, where the term sheriff is used, the provisions applicable thereto are to apply to every coroner or other person lawfully acting in his place. See section 40, *post*. Sheriff.

(c) Where the lands injuriously affected are within the city, the jury of the city are competent to try the question of compensation, though the works which occasion the injury are in the county (*R. v. G. N. Ry. Co.*, 14 Q. B. 25; 6 R. C. 246). Lands injured in the City.

(d) Upon the question of disqualifying interest, see the notes to the Companies Clauses Act, 1845, section 3, *ante*, p. 64.

(e) In the Metropolitan Police Courts, any one police magistrate can do alone any act which by law is directed to be done by more than one justice (2 & 3 Vict. c. 71, s. 14). Police magistrates.

And by 21 & 22 Vict. cap. 73, section 1, every stipendiary magistrate appointed for any city, town, liberty, borough, place or district, sitting at a police court or other place appointed in that behalf, shall have power to do alone any act, and to exercise alone any jurisdiction which under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of parliament auxiliary to the jurisdiction of such justices, shall be applicable also to the jurisdiction of such stipendiary magistrate. Stipendiary magistrate.

4. And be it enacted, that in citing this Act in other Acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845." Short title of the Act.

5. And whereas it may be convenient in some cases to incorporate with Acts of parliament hereafter to be passed some portion only of the provisions of this Act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate. Form in which portions of this Act may be incorporated with other Acts.

Where an Act excluded the provisions of the Lands Clauses Consolidation Act, 1845, which relate to "the purchase and taking of lands otherwise than by agreement," it was held that all the clauses under that heading, *i. e.*, sections 16—68 were excluded (*Ferrar v. Commissioners of Sewers of London*, L. R. 4 Ex. 227; *Dungey v. Mayor of London*, 38 L. J. C. P. 298). Reference to heading of sections.

And where this Act was incorporated except so much "as relates to the purchase of land otherwise than by agreement," and by a subsequent Act, the exception was "the part with respect to the purchase and taking of lands otherwise than by agreement," it was held that both the special Acts incorporated this Act, excepting only the clauses (16 to 68) which come under the heading "with respect to the purchase and taking of lands otherwise than by agreement" (*Reg. v. Mayor of London*, L. R. 2 Q. B. 292). Exclusion of parts of Act.

But if the exception is of "so much as relates *exclusively* to the purchase and taking of land by compulsion," such sections as the 68th relating to the injurious affecting of lands will not be excluded (*Broadbent v. Imperial Gas Light Co.*, 7 D. M. & G. 436; 26 L. J. Ch. 276).

See also the notes to section 1 as to incorporation of this Act.

8 Vict. c. 18,
s. 6.

Purchase of
lands by
agreement.

Power to
purchase
lands by
agreement.

[By 27 & 28
Vict. c. 121,
s. 30, con-
tracts with
promoters
bind the
company.]
Costs.

Agreement
with pro-
motors before
Act passes.

Contracts
before incor-
poration.

Mines and
minerals.

Evidence that
land required.

Meaning of
"taking."

Plans and
books of
reference.

Deposited
plans.

Notice before
Act passed
not binding.

And with respect to the purchase of lands by agreement, be it enacted as follows:

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Sections 81 and 82, dealing with the costs of conveyances, apply to the case of a contract with an owner not under disability. Section 80, on the other hand, does not apply to such a case. The vendor should therefore be careful to provide for the costs of the preparation and execution of the contract, as also for the costs of preliminary negotiations (see Davidson's Conveyancing, vol. ii., part 1, pp. 63, 66. See, too, a useful precedent in Key and Elphinstone's Compendium, p. 65—7).

Possibly such agreements as those contained in the precedent above referred to, would not be considered as within the Lands Clauses Consolidation Acts, so that for instance the costs could not be taxed under the Lands Clauses Act, 1869 (see *Doulton v. Metropolitan Board of Works*, L. R. 5 Q. B. 333, and *Wombwell v. Corporation of Barnsley*, 36 L. T. N. S. 703).

An agreement entered into with promoters before the passing of the Act, which authorizes the undertaking and incorporates the Lands Clauses Act, is not within the Lands Clauses Act. Such an agreement should provide fully for costs (*Callin v. G. N. Ry. Co.*, 18 W. R. 121).

For the cases upon contracts with promoters before the incorporation of the company, see the notes to the Railway Construction Facilities Act, 1864 (27 & 28 Vict. c. 121, s. 30).

Lands include minerals. A railway company may accordingly purchase minerals, and may purchase these after it has purchased the surface. The provisions of section 77 and the following sections of the Railways Clauses Act, 1845, do not affect this power (*Errington v. Metropolitan District Ry. Co.*, 19 Ch. D. 559).

As to the evidence to show that the land is required, see the notes to section 18, *post*.

A proviso restraining the "taking" of lands until certain conditions should be complied with, was held not to prevent the company from serving notices to treat (*Spencer v. Metropolitan Board of Works*, 22 Ch. D. 122).

The standing orders of the House of Commons require the lands intended to be taken to be delineated on plans, and described in books of reference deposited with the clerk of the peace for the county where the lands are situated.

But in determining the lands authorized to be taken the special Act must be looked to, and the deposited plans and books of reference are not binding on the company except so far as they are incorporated in the special Act (*North British Ry. Co. v. Tod*, 12 Cl. & F. 722; 4 R. C. 449; *R. v. Caledonian Ry. Co.*, 16 Q. B. 19).

Thus the fact that the name of an owner or lessee has been omitted from the books of reference, will not prevent the company from taking his interest if the lands are included in the special Act (*Kemp v. West End of London & Crystal Palace Ry. Co.*, 1 K. & J. 681).

So where a company before applying for their Act gave notice that they would require certain lands, and the Act authorized them to take more lands, they were held not bound by the notice as to the amount of land required, though the deposited plans referred only to the smaller amount (*In re Corporation of Huddersfield & Jacob*, 10 Ch. 92).

Again, a representation on the plans that the railway is to be carried over a street on an arch, will not prevent the company from stopping up the street if the Act gives them power to do so (*A.-G. v. G. E. Ry. Co.*, 7 Ch. 476).

Upon the same principle, a recital in an agreement for the purchase of land in order to make a road, that the company are desirous of making a road according to certain deposited plans and sections which are not further incorporated into the agreement, will not prevent the company from altering the level of the road (*Breynton v. L. & N. W. Ry. Co.*, 10 Beav. 238; 2 Co. tem. Cott. 108).

A memorandum on the plan that the company intend to divert a road in the manner indicated upon the plan, will not authorize the diversion if no special power is inserted in the Act (*A.-G. v. G. N. Ry. Co.*, 4 De G. & S. 75; *R. v. Wycombe Ry. Co.*, L. R. 2 Q. B. 310).

8 Vict. c. 18,
s. 6.

And where the plans are incorporated in the Act, they are as a rule only binding to the extent of the datum line, but are not to be referred to for the purpose of surface levels (*Beardner v. L. & N. W. Ry. Co.*, 1 M'N. & G. 112; *R. v. Caledonian Ry. Co.*, 16 Q. B. 19).

Plans, how
far binding.

Different considerations apply where powers are given to pen back water, and the works are to be executed in the lines delineated upon a plan which is described as showing the lines with a section showing the levels (*Ware v. Regent's Canal Co.*, 3 De G. & J. 212).

Errors and omissions in the plans where they have arisen by mistake, may be corrected under certificate of two justices, see Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), section 7, *post*.

Errors in
plans.

As to whether an agreement to complete the works in a line not authorized by the plans or the Act where the authorized line is not practicable is *ultra vires*, see *Mayor of Norwich v. Norfolk Ry. Co.*, 4 E. & B. 397.

Agreement
to construct
works in a
line not
authorized.

Contracts between railway companies and landowners, capable of conveying independently of the statute, are subject to the ordinary rules governing such contracts, and it is proposed here to note only a few points more commonly occurring on contracts with railway companies.

Voluntary
contracts.

An agreement by a company with a landowner to take a certain amount of land at a fixed price, and to purchase any more land they may require at so much an acre, the agreement to be supplemental to the Lands Clauses Act, is binding on both parties for the time within which the company are to finish their works (*Kemp v. S. E. Ry. Co.*, 7 Ch. 634; see *Rangely v. Midland Ry. Co.*, 3 Ch. 306).

Duration of
agreement.

An agreement to pay interest at five per cent. if the purchase-money should not be paid within a year, and interest at eight per cent. from the end of the following year, has been held not to be in the nature of a penalty (*Herbert v. Salisbury & Yeovil Ry. Co.*, 2 Eq. 221).

But a provision that if the company does not pay the whole purchase-money by a certain day the vendor may repossess the land without repaying instalments already paid, is in the nature of a penalty from which the company is entitled to be relieved on payment of the balance and interest (*In re Dagenham (Thames) Dock Co.*, 8 Ch. 1022).

If no time is fixed for the completion of the contract, it must be completed within a reasonable time (*Baker v. Metropolitan Ry. Co.*, 31 B. 504).

If the price is to be settled by arbitration, specific performance cannot be decreed before the price is ascertained (*Morgan v. Milman*, 3 D. M. & G. 24).

Where a landowner agrees to sell for a sum to be paid on completion with interest at four per cent. from the date of the agreement, the company to be at liberty to take possession on making a deposit, and if completion delayed for more than six months, interest to be payable at five per cent., the landowner must stand by the agreement, and is not entitled in an action for specific performance to an order on motion for payment of the purchase-money into court (*Pryse v. Cambrian Ry. Co.*, 2 Ch. 444. See *Bodington v. Gt. W. Ry. Co.*, 13 Jur. 144).

Money paid
into court.

Where the company enter into an agreement to purchase land, and a dispute arises as to the title, an order cannot be made in an action for specific performance to let the company into possession upon payment of the purchase-money into court (*Bygrave v. Metropolitan Board of Works*, 32 Ch. D. 147).

Possession.

Where the company has been let into possession under an agreement, but has not paid the purchase-money, the vendor's remedy is not to restrain the company from keeping possession, but to have the purchase-money paid into court (*Pell v. Northampton & Banbury Junction Ry. Co.*, 2 Ch. 100).

As a rule, the purchaser will be allowed the option of giving up possession.

But if the company, having entered into possession under an agreement, do acts of damage to the property they will be ordered to pay the purchase-money into court without being allowed the option of giving up possession (*Pope v. Gt. E. Ry. Co.*, 3 Eq. 171; *Lewis v. James*, 32 Ch. D. 326).

Under an agreement with a person not under disability, where the purchase-money is to be ascertained by a referee, no interest is payable till the price is ascertained, and the vendor must pay the outgoings up to that time (*Calling v. Gt. N. Ry. Co.*, 18 W. R. 121).

Interest.

When the purchase-money is not paid on the day appointed, owing to the purchaser's default, and the vendor retains possession, he is entitled to interest on the purchase-money, and must give credit for the rents and profits he receives.

8 Vict. c. 18,
s. 7.

If the delay is caused by the vendor, the purchaser must pay interest if he exercises acts of ownership (*Ballard v. Shutt*, 15 Ch. D. 122).

And if the vendor allows the property to remain unlet, he is chargeable with the rents he might have received (see *Phillips v. Sylvester*, 8 Ch. 173; *Earl of Egmont v. Smith*, 6 Ch. D. 469).

Possibly, however, this principle would not apply where the purchaser is a company requiring actual possession of the land for the execution of its works.

Use and
occupation.

Where the vendor himself remains in possession and carries on his business on the land, he will not be charged with an occupation rent unless it is proved or admitted that his occupation was beneficial (*Leggott v. Metropolitan Ry. Co.*, 5 Ch. 716; *Metropolitan Ry. Co. v. Defries*, 2 Q. B. D. 189, 387).

Interest runs
from date of
possession,

Where the purchase-money is fixed by arbitration, and the company take possession before the price is ascertained, the vendor is, in the absence of agreement, entitled to interest at four per cent. upon the purchase-money from the time when the company take possession (*Rhys v. Dare Valley Ry. Co.*, 19 Eq. 93).

or from
verdict,

Where the compensation is settled by a jury before the company take possession, interest is payable from the date when the company might have prudently taken possession, that is, where a good title is shown (*In re Piggott and Gt. W. Ry. Co.*, 18 Ch. D. 146; *Spencer-Bell and L. & S. W. Ry. Co.*, 33 W. R. 771; not following *In re Eccleshill Local Board*, 13 Ch. D. 365).

If six months' interest in lieu of notice becomes payable to a mortgagee it must be borne by the vendor (*Spencer-Bell and L. & S. W. Ry. Co.*, 33 W. R. 771).

Where a sum is paid into court upon which the company are entitled to possession, and a larger sum is ultimately fixed as the price of the land, the company must pay interest on the difference from the date when the smaller sum was paid into court (*In re Shaw and Corporation of Birmingham*, 27 Ch. D. 614; see *In re Navan and Kingscourt Ry. Co.*, 1 R. 10 Eq. 113).

If the company enter under section 85, interest at five per cent. as provided by that section is payable from possession until deposit or payment of the purchase-money, whether ascertained by a ward or verdict (*In re Belfast Water Commissioners, Ex parte Dalway*, 16 L. R. Ir. 13).

not payable
after payment
into court.

The obligation to pay interest under a special contract to pay interest until completion, ceases when the company pay the money into court under section 69 (*Lewes v. S. W. Ry. Co.*, 22 L. J. Ch. 209; 10 Hare, 119).

Under special circumstances, however, interest may be payable until the money is invested (*Ex parte Hardwicke*, 1 D. M. & G. 297).

Where the purchase-money was deposited in a bank by agreement until it was paid into court, interest was nevertheless held to be payable till payment into court in the absence of any stipulation to the contrary, though the company could make no use of the money (*Chambers v. White*, 14 Jur. 1129).

Purchase-money, though properly fixed under the Act, cannot be attached under a garnishee order nisi before the execution or tender of a conveyance (*Howell v. Metropolitan District Ry. Co.*, 19 Ch. D. 508; see, too, *Richardson v. Elmit*, 2 C. P. D. 9).

The court will not, in a suit on the part of a landowner against a company for specific performance of an agreement to take lands, make a decree where there has been no investigation of title, but will refer it to chambers to see whether a good title can be made (*Gunston v. E. Gloucestershire Ry. Co.*, 18 L. T. N. S. 8).

And see as to the specific performance of agreements to execute works, &c., section 97 of the Companies Clauses Act, 1845, *ante*, p. 107.

As to the rights of unpaid vendors, see s. 84, *post*.

Parties under
disability
enabled to sell
and convey.
[By 27 & 28
Vict. c. 121,
s. 3, parties
under dis-
ability may
contract with
promoters
before incor-
poration, but
they may not
convey.]

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements (a) for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail (b) or for life (c), married women (d) seised in their own right or entitled to dower, guardians (e), committees (f) of lunatics and idiots, trustees or feoffees (g) in trust for charitable or other purposes, executors and administrators, and all parties for the time

8 Vict. c. 18,
s. 7.

being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease (*h*) for life, or for lives and years, or for years, or any less interest, and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

(a) The mode in which the compensation is to be assessed is pointed out by section 9, but it has been ingeniously suggested that the power "to enter into all necessary agreements" given by this section enables persons under disability to agree upon a price, and that such agreement will be binding on the company, provided the agreed price exceed the sum subsequently fixed under section 9 (see *Friend & Ware, R. Prec. 37*, citing *Baker v. Metropolitan Ry. Co.*, 31 B. 511).

Agreement by person under disability as to price.

(b) Tenant-in-tail may sell to a railway company in the same way as to a private person, the purchase-money being agreed between them, and in that case the deed of conveyance must be enrolled in Chancery in the usual way, under the Abolition of Fines and Recoveries Act; or he may sell under the provisions of the Act, the compensation being assessed in the manner directed by the Act, and in such a case enrolment is not necessary.

Tenant in tail.

Tenant-in-tail restrained by statute from alienating may sell under the Act, but the reversion if in the Crown cannot be affected without its consent (*Re Cuckfield*, 19 Beav. 153; 24 L. J. Ch. 585).

Statutory tenant in tail.

(c) An equitable tenant for life may contract to sell under this section, but the trustees must join in the conveyance (*Lippincott v. Smith*, 29 L. J. Ch. 520; 8 W. R. 336).

Tenant for life.

It would seem that a tenant for life restrained from alienation may sell under this section (see *Devenish v. Brown*, 2 Jur. N. S. 1043).

Where a tenant for life contracted to sell lands to a company, the company to pay interest at the rate of five per cent. to the tenant for life for his own benefit, it was decided that this rate of interest was not an unfair advantage to take of his position (*In re Hungerford and The Rugby & Stafford. Ry. Co.*, 1 Jur. N. S. 845).

(d) In the case of a sale to the company independently of the Act, a married woman can, of course, release her right to dower by deed acknowledged in the ordinary way.

Married women.

Where the purchase-money is ascertained under the Act, separate acknowledgment by a married woman in order to release her dower is unnecessary, and it seems she would not even be a necessary party to the conveyance (see *Friend & Ware, R. Prec. p. 218, n.*).

A married woman merely entitled to dower has no power under this section to bind the fee.

The words "married women seised in their own right" include, of course, the case where husband and wife are seised in right of the wife (*Cooper v. Gostling*, 11

- 8 Vict. c. 18, s. 8. W. R. 931; 9 Jur. N. S. 1006; 4 Giff. 499, where the husband and wife were seised by entireties).
- Guardians.** (e) As to what guardians are within this section, see an excellent note in *Frend & Ware*, R. Prec. p. 237. The conclusions arrived at by the authors are that guardians by nature, by nurture, and *ad litem*, whose duties are limited to the person or to the particular property affected by a suit, are not within the section; on the other hand testamentary guardians, and guardians by the appointment of the Lord Chancellor, are clearly within the section; and it would seem that guardians *in socage*, by election and by custom, might also exercise the statutory powers conferred by the section.
- Lunatics.** (f) A lunatic can only contract by his committee under this section (*In re Tugwell*, 27 Ch. D. 309).
And a contract by the committee of a lunatic must be sanctioned by the judge in lunacy (*In re Brown*, M'N. & G. 201).
An annuity charged upon land may, with the consent of the court, be released by the committee of a lunatic in consideration of a Government annuity of the same amount (*In re Brewer*, 1 Ch. D. 409).
- Charitable trusts.** (g) Land purchased by one of the wards of the City of London, for the purpose of providing rooms for transacting the business of the ward, is not held on trust for charitable purposes, and may be sold without reference to this section (*Finnis and Young to Forbes and Pochin*, 24 Ch. D. 587).
- Trustees.** Trustees for a married woman, who is absolutely entitled for her separate use, cannot sell under this section (*Peters v. Lewes and East Grinstead Ry. Co.*, 18 Ch. D. 429).
- Price to be fixed by surveyors.** A contract by trustees to sell at a price to be fixed by two surveyors under section 9 is valid. It is not necessary that the trustees should contract to sell at a named price which is subsequently tested by two surveyors (*Peters v. Lewes and East Grinstead Ry. Co.*, 18 Ch. D. 429).
- Lessee.** (h) Where the company serve a notice to take lands held under a lease containing a covenant not to assign without licence, the lessee is not bound to procure a licence, the necessity for a licence being taken away by the Act (*Slipper v. Tottenham and Hampstead Junction Ry. Co.*, 4 Eq. 112).
It appears to be doubtful whether, where the company require the land for a limited period only, they can deal with a lessee who is restrained from assignment without treating with the owner in fee as well (see *Legg v. Belfast & Ballymena Ry. Co.*, 1 Ir. C. L. 124, note; *R. v. L. & N. W. Ry. Co.*, 18 Jur. 993; 3 E. & B. 443).
A railway company taking leaseholds under their powers will be bound to take assignment, and to indemnify the lessee (*Harding v. Metropolitan Ry. Co.*, 7 Ch. 154).
A lessee whose property has been taken by a company is not liable to his lessor for a breach of the conditions of the lease by the company (*Baily v. De Crespigny*, L. R. 4 Q. B. 180).
But the lessee remains liable to the lessor for breaches of covenant down to the assignment to the company (*Mills v. East London Union*, L. R. 8 C. P. 79).
- Equitable mortgages.** The company cannot deal with the mortgagor in possession under this section so as to bind equitable mortgagees who have not been served with notice to treat (*Martin v. L. C. & D. Ry. Co.*, 35 L. J. Ch. 795; 1 Eq. 146; 1 Ch. 501).
Persons under disability, such as charity trustees, are, it seems, enabled to convey lands which the company may be required to take under section 92 (*St. Thomas's Hospital v. Charing Cross Ry. Co.*, 30 L. J. Ch. 395).
- Purchase from tenant for life.** If the company treat with a tenant for life under the Act they cannot require the sale to be completed as a sale by his trustees (*In re Pigott and G. W. Ry. Co.*, 18 Ch. D. 146).
And if trustees with a power of sale purport to sell, not under the power, but under the provisions of the Act, the validity of the sale must be determined without reference to the power (*Peters v. Lewes and East Grinstead Ry. Co.*, 18 Ch. D. 429).
- Parties under disability to exercise other powers.** 8. The power hereinafter* given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore
- * [See sect. 95 *et seq.*, *post.*]

enabled to sell and convey or release lands to the promoters of the undertaking.

8 Vict. c. 18,
ss. 9, 10.

9. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands (a) shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party; and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the bank.

In cases of disability, the provisions of this section must be strictly followed; a mere agreement between two surveyors is not sufficient, but surveyors should be formally nominated, and should meet to consider the question; and the declaration in writing required by the section to be annexed to the valuation is essential to its validity (*Wycombe Ry. Co. v. Donnington Hospital*, 1 Ch. 268; *Bridgend Gas and Water Co. v. Dunraven*, 31 Ch. D. 219).

The section must be strictly followed.

However, upon a petition by a tenant for life for investment of purchase-money which had been assessed by one surveyor acting for both parties, the court made the order prayed, subject to the affidavit of a surveyor to be appointed by the petitioner that the price was sufficient (*Ex parte Rector of Adderley*, 10 L. T. N. S. 131).

Where trustees sell under section 7, one of them cannot act as surveyor under this section (*Peters v. Lewes and East Grinstead Ry. Co.*, 18 Ch. D. 429).

If the company refuse to appoint a surveyor, it seems clear that the proper course is to compel them to do so by *mandamus*, and that the court has no power to direct an inquiry whether the sum agreed to be paid is a proper sum, notwithstanding *Baker v. Metropolitan Ry. Co.*, 32 L. J. Ch. 7; 31 Beav. 504, and note, p. 511.

Mandamus to appoint surveyor.

(a) The words "such lands" here mean not lands to be purchased or taken from persons under disability, but lands held by persons under disability, and such persons may enter into agreements as well for the purchase-money of lands taken as for the compensation in respect of lands injuriously affected so as to bind the fee (*Stons v. Corporation of Yeovil*, 1 C. P. D. 691; 2 ib. 99; 46 L. J. C. P. D. 137).

10. It shall be lawful for any person* seized in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the

Where vendor absolutely entitled, lands may be sold on chief rents.
* [Extended by 23 & 24 Vict. c. 106,

8 Vict. c. 18;
ss. 11, 12.

consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

ss. 1, 2, to
persons under
disability.]

A rent-charge granted to a contractor in consideration of his paying the purchase-money for lands conveyed direct to the company has been held valid. The case is different where it is not clear whether the sum paid by the contractor represents purchase-money or compensation for damage (*In re Manchester and Milford Ry. Co.*, 15 L. J. N. C. 47).

Payment of
rents to be
charged on
tolls.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Powers of
distress.

The company may give the owners of rent-charges powers of distress, and leave has been given to the owner of a rent-charge to distrain, notwithstanding the appointment of a receiver in a suit by a similar owner on behalf of himself and all other owners of rent-charges who should contribute to the expenses of the suit (*Eyton v. Denbigh, Ruthin & Corwen Ry. Co.*, 6 Eq. 14).

But where surplus lands and chattels had been assigned to trustees on behalf of the creditors of the company, and a receiver had been appointed in a creditor's suit to administer the trusts of the deed, leave to distrain was refused (*Eyton v. Denbigh, &c. Ry. Co.*, 6 Eq. 488).

The grantee of the rent-charge may reserve a right of re-entry in the event of the rent-charge remaining unpaid (*Forster v. Manchester and Milford Ry. Co.*, W. N. 1880, p. 63).

Rolling-stock
protected.

The Railway Companies Act, 1867, section 4, protects the rolling-stock from execution, but not from distress; it would seem, however, that the rolling-stock and other chattels necessary for carrying on the undertaking cannot be distrained (*Eyton v. Denbigh, &c. Ry. Co.*, 6 Eq. 488).

Rails and sleepers affixed in the ordinary way to the soil become fixtures, and are not distrainable (*Turner v. Cameron*, L. R. 5 Q. B. 306).

Lien for
arrears.

Upon the question whether the owner of a rent-charge has a lien in respect of arrears of his rent-charge, the cases of *Earl of Jersey v. Briton Ferry Floating Dock Co.*, 7 Eq. 409, and *Eyton v. Denbigh, &c. Ry. Co.*, 7 Eq. 439, appear to be not easily reconcilable.

On the whole, it would seem that a person who has agreed to convey lands in consideration of a rent-charge has no lien upon the lands for arrears of the rent-charge due before the conveyance is made (*Earl of Jersey v. Briton Ferry, &c. Co.*, 7 Eq. 409).

On the other hand, it is clear that a rent-charge charged on the undertaking has priority over mortgages and debentures, and that each owner of such a rent-charge has also a charge upon the lands conveyed by him in consideration of the rent-charge, but not upon the other lands of the company (*Eyton v. Denbigh, &c. Ry. Co.*, 7 Eq. 439).

Power to pur-
chase lands
required for
additional
accommoda-
tion.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Extraordinary purposes are defined in the Railways Clauses Act, 1845, s. 45.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

8 Vict. c. 18,
ss. 13—16.

Authority to
sell and re-
purchase such
lands.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Restraint on
purchase from
incapacitated
persons.

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the commissioners of her majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Municipal
corporations
not to sell
without the
approbation
of the Trea-
sury.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

Purchase of
lands otherwise
than by agree-
ment.

16. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Capital to be
subscribed
before com-
pulsory
powers of
purchase put
in force.

The meaning of this section appears to be that the company cannot exercise its compulsory powers till the necessary capital is subscribed, but if they give notice to treat, the landowner may adopt the notice and compel the company to proceed to have the value of the land ascertained (*Guest v. Poole and Bournemouth Ry. Co.*, L. R. 5 C. P. 553).

Till capital
subscribed
lands cannot
be taken by
company.

In cases not governed by this section, it has been held that a landowner could not resist the exercise of compulsory powers on the ground that the persons exercising the powers had not a sufficient fund in hand to satisfy the price which might be awarded (*Salmon v. Randall*, 3 M. & Cr. 439).

8 Vict. c. 18,
ss. 17, 18.

This section does not apply to the case of an existing company making a branch line under an extension Act authorizing them to raise funds for the purpose (*R. v. G. W. Ry. Co.*, 1 E. & B. 253; 22 L. J. Q. B. 65; *Weld v. S. W. Ry. Co.*, 33 L. J. Ch. 142; 32 Beav. 340).

Whether, where it is evident that a line cannot be completed, the company can take compulsorily any part of the property through which it was proposed that the line should pass, see *Gray v. Liverpool and Bury Ry. Co.*, 9 Beav. 391; *Blackmore v. Glamorganshire Canal Co.*, 1 My. & K. 164, per Lord Eldon; *Cohen v. Wilkinson*, 1 M'N. & G. 481; *Salmon v. Randall*, 3 My. & Cr. 539.

A certificate
of two jus-
tices to be
evidence that
the capital
has been
subscribed.

17. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

Certificate
conclusive.

A certificate under this section is, it seems, conclusive on the landowners in the absence of fraud (*Yatalyfera Iron Co. v. Neath & Brecon Ry. Co.*, 17 Eq. 142; where, however, there was no evidence to show that the certificate was not correct (see *Landowners, &c. Co. v. Ashford*, 16 Ch. D. 411, 429).

Notice of
intention to
take lands.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Easements.

A company has no power under this Act to give notice that they require an easement over lands such as a right of way (*Pinchin v. London & Blackwall Ry. Co.*, 5 D. M. & G. 851).

Right to
tunnel.

Nor can the company take the strata of land through which they intend to drive a tunnel without taking the surface as well (see *Sparrow v. Oxford, Worcester & Wolverhampton Ry. Co.*, 2 D. M. & G. 94; *Falkner v. Somerset & Dorset Ry. Co.*, 16 Eq. 458; 42 L. J. Ch. 851; *Re Metr. Dist. Ry. Co. & Cosh*, 40 L. T. N. S. 482; 13 Ch. D. 607).

Power to take
easement.

Where the special Act gives express power to purchase any right over land and the company by their buildings interfere with an easement belonging to neighbouring lands, they need not give notice to treat for the purchase of the easement, the owners' remedy being under section 68, for injuriously affecting his land (*Macey v. Metr. Board of Works*, 33 L. J. Ch. 377; *Clark v. School Board of London*, 9 Ch. 120; *Wigram v. Fryer*, 36 Ch. D. 87. See *Duke of Bedford v. Dawson*, 20 Eq. 353).

Where the special Act incorporated this Act and empowered the company to take an easement over the line of another company, and provided for the reference of disputes to arbitration, it was held that this Act did not apply to the easement (*G. W. Ry. Co. v. Swindon, &c. Ry. Co.*, 22 Ch. D. 677; 9 App. C. 787).

Power to take
stream.

Where a corporation have power to take the whole or any part of a stream, and they give notice to take the whole, they are bound to make compensation at once for the whole value of the interest of owners of the stream (*Ferrand v. Corporation of Bradford*, 21 Beav. 412; *Stone v. Corporation of Yeovil*, 2 C. P. D. 99).

On the other hand, where only a part of the stream is taken, it is a case for compensation under section 68, as for an injurious affecting of lands (*Bush v. Troubridge Waterworks Co.*, 19 Eq. 291; 10 Ch. 459).

8 Vict. c. 18,
s. 18.

It seems the company may take a piece of land without taking a right of pre-emption which the owner has over other land where such right is a personal right only (*Clout v. Metr. Joint Committee*, 48 L. T. 257).

Mortgagees of the land are entitled to a notice under this section (*Martin v. L. C. & D. Ry. Co.*, 1 Ch. 501).

Mortgagees
entitled to
notice.

A tenant from year to year receiving notice to quit from his landlord because the land is required by the company, or receiving notice to quit from the company, after they have purchased the landlord's interest, is not entitled to a notice to treat or compensation, where the land is not required till his tenancy is at an end (*Ex parte Nadin*, 17 L. J. Ch. 421; *Syers v. Metr. Board of Works*, 36 L. T. N. S. 277).

Yearly
tenant.

As to the service of the notice referred to, see sections 19, 20, *post*; as to the signature of the notice, see *ante*, section 139, of the Companies Clauses Act, 1845 (8 Vict. c. 16).

Service of
notice.

Neither the notice to treat nor an agreement to settle the price, need be under seal (*Smith v. Dublin & Bray Ry. Co.*, 3 Ir. Ch. Rep. 225).

The notice to treat though followed by an agreement as to the price need not be stamped as an agreement (*Rawlings v. Metr. Ry. Co.*, 37 L. J. Ch. 824).

A notice to treat will not, by itself, prevent the corporation giving it from setting up that the lands included in the notice are the lands of the corporation (*Campbell v. Mayor & Corporation of Liverpool*, 9 Eq. 579).

Estoppel by
notice.

The notice should state accurately the quantities and situation of the lands required. A plan is generally annexed to the notice (*Sims v. Commercial Ry. Co.*, 1 R. Ca. 431; 4 My. & Cr. 124. In that case the plan annexed bore no scale of admeasurement, but it was held that that was not a ground for saying the notice was insufficient).

Contents of
notice.

But a mistake on the face of the plan will prevent the company entering on any lands which may be omitted (see *Kemp v. London & Brighton Ry. Co.*, 1 R. Ca. 495).

A notice to treat, which includes lands which the company are not authorized to take, is wholly void (*Wrigley v. Lancashire & Yorkshire Ry. Co.*, 4 Giff. 352; 9 Jur. N. S. 710).

A notice to take lands which are wholly within the limits of deviation, but are not further delineated is a good notice (*Dowling v. Pontypool, Caerleon, &c. Ry. Co.*, 18 Eq. 714; 43 L. J. Ch. 101).

Ambiguous
notice.

Where the lands included in the notice are partly within the limits of deviation and partly outside those limits but the boundary line is not delineated in the plans, the notice will be valid if it appear, from a comparison of the plans and the land, that the landowner had reasonable notice what the land intended to be taken was (*Dowling v. Pontypool, Caerleon, &c. Ry. Co.*, 18 Eq. 714; 43 L. J. Ch. 101).

Where the deposited plans and book of reference showed a small plot, No. 38, nearly surrounded by a large plot, No. 37, and the accompanying plan omitted both the number and the boundary of 38, but the painted area on the notice plan in part covered the site of 38, and this fact was known to the plaintiffs long before they pointed out the objection, it was held that the notice was sufficient under the circumstances to entitle the company to take 38 (*Dowling v. Pontypool, Caerleon & Newport Ry. Co.*, L. R. 18 Eq. 714; 43 L. J. Ch. 101; and see *Corporation of Huddersfield v. Jacob*, L. R. 10 Ch. 92).

Dowling's
case.

Trading companies will not necessarily be allowed to take lands which they are by their Acts authorized to purchase or take, if it can be shown that such lands are not actually required for the purposes of the undertaking.

Lands taken
must be for
purposes of
company.

Thus a railway company was not allowed permanently to take lands authorized to be taken, but required only for excavating materials (*Webb v. Manchester & Leeds Ry. Co.*, 4 M. & Cr. 116; *Everfield v. Mid-Sussex Ry. Co.*, 3 De G. & J. 286; see *Dodd v. Salisbury & Exeter Ry. Co.*, 1 Giff. 158; 33 L. T. 311; *Bentinck v. Norfolk Estuary Co.*, 26 L. J. Ch. 404; 8 M. & G. 714).

So a company was restrained from taking lands which were to be transferred to another landowner in pursuance of an agreement with the latter (*Fane v. Cocker-mouth, &c. Ry. Co.*, 13 W. R. 1015. See *Lord Carrington v. Wycombe Ry. Co.*, 3 Ch. 377; *Rolls v. School Board of London*, 27 Ch. D. 639).

A company will not be restrained from exercising its compulsory powers of taking land for the purposes of its Acts on the ground that those purposes might be carried out in some other way without taking the land (*Lamb v. North London Ry. Co.*, 4 Ch. 522).

Nor will the *bond fide* exercise of a statutory power be restrained, though the

- 8 Vict. c. 18, s. 18.** company may thereby obtain an advantage not contemplated by the statute (*Sterens v. Metr. Dist. Ry. Co.*, 29 Ch. D. 60).
- Accommodation works.** The purposes of the company include the construction of accommodation works which the company is empowered to construct under sect. 16 of the Railways Clauses Act. Therefore, the company may take the land of A. if it is within the limits of deviation for the purpose of constructing accommodation works for B. (*Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745; *Wilkinson v. Hull, &c. Ry. and Dock Co.*, 20 Ch. D. 323).
- Public bodies.** Under certain private Acts authorizing public authorities to take specified lands for public improvements, and containing powers of sale and leasing, the authorities have been held entitled to take all the specified lands, though some part of them may not have been required for the purposes of the improvement (*Galloway v. Mayor of London*, L. R. 1 H. L. 34; *Quinton v. Corporation of Bristol*, 17 Eq. 524).
- Improvements under 57 Geo. III. c. 29.** Many important improvements in London have been carried out under the obscure Act 57 Geo. III. c. 29, which enables the authorities having control of the pavements to alter, widen, turn or extend streets, and to lengthen and continue or open the same from the sides or ends of any street or public place, and for these purposes to take lands.
- The Act requires (sect. 80) the authority first to adjudicate that the taking of the lands is necessary. An adjudication is therefore a condition precedent to the exercise of the compulsory powers (*Thomas v. Daw*, 2 Ch. 1).
- The adjudication, for instance, that the whole of a house is wanted, if honestly made, cannot be questioned, though it may be erroneous.
- But the authority cannot adjudicate in contradiction of the facts. If, therefore, the plans show that only part of a piece of land is required they cannot adjudicate that the whole is wanted. And the authority must determine what the improvement is to be before they adjudicate (*Gard v. Commrs. of Sewers*, 28 Ch. D. 486; *Lynch v. Commrs. of Sewers*, 32 Ch. D. 72).
- In the case of a house the authority cannot take more of the house than is wanted for the improvement if the owner is willing that only that portion should be taken (*Teulière v. Kensington Vestry*, 30 Ch. D. 642).
- Evidence that lands required.** The evidence of the engineer of the company, if given with a reasonable appearance of accuracy, is conclusive as to the quantity of land required (*Stockton & Darlington Ry. Co. v. Brown*, 9 H. L. 246; *Kemp v. S. E. Ry. Co.*, 7 Ch. 364; *Errington v. Metr. Dist. Ry. Co.*, 19 Ch. D. 559).
- But an affidavit merely stating that the lands will be required for the purposes of the Act and for the railway and works is not sufficient if the purposes are not stated, and the other side deny that they will be required (*Flower v. Brighton Ry. Co.*, 2 Dr. & Sm. 330; 5 N. R. 424. See *Flower v. Muspratt*, 6 N. R. 200).
- Where doubts exist as to what lands are authorized to be taken the Act is generally to be construed in favour of the landowner (*Simpson v. South Staffordshire Ry. Co.*, 13 W. R. 729; 34 L. J. Ch. 380; *Webb v. Manchester & Leeds Ry. Co.*, 4 My. & Cr. 120; *Lamb v. North London Ry. Co.*, 4 Ch. 522).
- Temporary use.** The Railways Clauses Consolidation Act, 1845, sects. 30—44, gives railway companies power temporarily to take possession of lands for the purpose of taking materials.
- Notice irrevocable.** Except in cases under sect. 92 (see *post*), the notice to treat cannot be revoked by trading companies (*R. v. Hungerford Market Co.*, 4 B. & Ad. 327; *Tauney v. Lynn & Ely Ry. Co.*, 16 L. J. Ch. 282; 4 R. C. 615).
- Municipal bodies.** The rule has been extended to a corporation acting under powers conferred upon it by a local Improvement Act (*Sterle v. Corporation of Liverpool*, 7 B. & S. 261; *Birch v. Vestry of St. Marylebone*, 20 L. T. N. S. 697; 17 W. R. 1014).
- Where, therefore, a company had given notice that they required certain lands, and then before anything had been done on the notice, withdrew it, and gave a second notice to treat for a portion of the lands, the second notice was held to be a nullity (*Tauney v. Lynn & Ely Ry. Co.*, 16 L. J. Ch. 282; 4 R. C. 615).
- The company cannot proceed to have a portion of the land comprised in the notice valued (*Eccles. Commrs. v. Commrs. of Sewers*, 14 Ch. D. 305).
- An injunction will be granted if the company attempt to take less land than they gave notice for (*Barker v. North Staffordshire Ry. Co.*, 2 De G. & Sm. 55; 5 R. Ca. 401, 417).
- When notice may be withdrawn.** But the Commissioners of Woods and Forests having limited powers of taking land provided the required quantity can be obtained for a given sum, have been held entitled to withdraw a notice to treat given in order to ascertain whether the lands could be purchased for the sum limited, when it appeared that they could not be so purchased (*R. v. Commissioners of Woods and Forests*, 15 Q. B. 761. See, however, *Birch v. Vestry of Marylebone*, 20 L. T. N. S. 697; 17 W. R. 1014).
- Possession by agreement with tenant.** After notice to treat to the owner the company will be restrained from entering into

possession by agreement with the tenant without compensating the owner (*Armstrong v. Waterford & Limerick Ry. Co.*, 10 Ir. Eq. 60).

Where notice to treat has been given, such notice will remain valid in favour of the company till the expiration of the time limited for completion of the works, unless there has been something more than mere delay to show that the company has abandoned the notice (see *Richmond v. N. London Ry. Co.*, 3 Ch. 679; *Kemp v. S. E. Ry. Co.*, 7 Ch. 364, p. 372; *Ystalyfera Iron Co. v. Neath & Brecon Ry. Co.*, 17 Eq. 142; *Bentley v. Rotherham & Kimberworth Local Board of Health*, 4 Ch. D. 588).

Thus, both the company and the landowner may proceed after the time limited for the exercise of the compulsory powers to have the compensation assessed upon a notice to treat given within the time so limited (*R. v. Birmingham & Oxford Junction Ry. Co.*, 19 L. J. Q. B. 453; 20 *ib.* 304; 15 Q. B. 634. *Brocklebank v. Whitehaven Junction Ry. Co.*, 5 R. C. 373, is overruled. See 15 Q. B. 647).

And he has this right even after the time for completion of the works has elapsed (*Tirerton, &c. Ry. Co. v. Loosmore*, 9 App. C. 480).

Where notice to treat has been given within the period limited for compulsory purchase, the company may enter under section 85 at any time before the end of the period for the completion of the works whether or not the works can in fact be completed before the end of that period; and the company may go on to complete the works after the period has elapsed (*Salisbury v. G. N. Ry. Co.*, 17 Q. B. 840; *Tirerton, &c. Ry. Co. v. Loosmore*, 9 App. C. 480).

The company may be estopped from setting up the validity of a notice to treat.

Thus, where a company has given notice to treat, but does nothing for several years, and the works are completed and the railway opened, and another Act is obtained for widening the line, and the piece of land comprised in the notice is scheduled to the new Act, they cannot be heard to say that they want the land for the purposes of the original Act, and will be restrained from proceeding under the old notice to treat (*Richmond v. L. & N. W. Ry. Co.*, 3 Ch. 679).

And where in an action of ejectment brought by a landowner the company have denied the existence of a notice to treat they cannot afterwards set up such a notice and claim to proceed under it (*Stretton v. G. W. & Brentford Ry. Co.*, 5 Ch. 751).

So a notice to treat may be considered abandoned if the company inform the landowner of their intention to apply to parliament for leave to abandon the undertaking (*Hedges v. Metr. Ry. Co.*, 28 Beav. 109).

It has been said in Scotland that unreasonable delay in completing the inchoate purchase created by the notice to treat, may become equivalent to an abandonment of the incomplete contract (*Glasgow Canal Co. v. Glasgow & Paisley Ry. Co.*, 30 June, 1849; 11 Sc. Sess. Ca. (2nd ser.) 1212; 13 Sc. Sess. Ca. (2nd ser.) 182).

The landowner may also by his conduct be estopped from disputing the validity of a notice to treat (see *Lynch v. Commissioners of Sewers*, 32 Ch. D. 72).

A notice to treat, if followed by entering into possession under sect. 85, may, perhaps, operate as a waiver of any previous contract (*Bedford & Cambridge Ry. Co. v. Stanley*, 2 J. & H. 746; 11 W. R. 139).

But a notice to treat will not operate as a waiver of a previous agreement, if neither the company nor the landowner treat the notice as valid (*Kemp v. S. E. Ry. Co.*, 7 Ch. 364, p. 373).

Notice to treat is not equivalent to requiring possession under section 121, *post*, and does not entitle the tenant to the benefit of that section (*R. v. Stone*, 35 L. J. M. C. 208; L. R. 1 Q. B. 529).

A notice to treat does not itself establish a contract between the landowner and the company capable of being specifically enforced (*Adams v. London & Blackwall Ry. Co.*, 6 R. C. 285; 2 M. & G. 118; *Haynes v. Haynes*, 1 Dr. & Sm. 426; overruling *Walker v. Eastern Counties Ry. Co.*, 6 Ha. 594; 5 R. C. 469).

The usual course is to move for a mandamus in the Queen's Bench Division to compel the company to proceed upon the notice to treat.

The landowner may also proceed by action for a mandamus in any division of the High Court under Order LIII., though he may not have sustained any damages by the delay (*Fotherby v. Metr. Ry. Co.*, L. R. 2 C. P. 188; *Guest v. Poole & Bournemouth Ry. Co.*, L. R. 5 C. P. 553).

The remedy by action for mandamus is, however, less satisfactory than that by motion in the Queen's Bench Division; as in the former case no mandamus will be granted till the hearing of the action (*Widnes Alkali Co. v. Sheffield & Midl. Ry. Co.*, 31 L. T. N. S. 131).

The Court has power under the Judicature Act, 1873, sect. 25, sub-sect. 8, to grant a mandamus by interlocutory order, but it is hardly likely to exercise this jurisdiction where the only relief asked for in the action is the mandamus (see this question also discussed under section 36, *post*).

Where the special Act incorporates this Act, and requires the company to give

8 Viet.
c. 18, s. 18.

How long the notice remains valid.

Compensation after expiration of compulsory powers.

Entry under section 85.

Company estopped from acting on notice.

Waiver of prior agreement.

Notice to treat is not a "requiring possession." Not a contract.

How notice enforced.

§ Viet. c. 18,
s. 18.

six months' notice of their intention to take land, a six months' notice is binding on the company, and they will be compelled to proceed to give notice and treat (*Morgan v. Metr. Ry. Co.*, L. R. 3 C. P. 553; 4 *ib.* 97. See *Tyson v. Mayor of London*, L. R. 7 C. P. 18).

Rights of
second incum-
brancer
receiving
notice.

If, after notice to treat to a second incumbrancer the company succeed in getting the property from a first incumbrancer having a power of sale, the second incumbrancer cannot bring an action for payment of arrears due under his security, nor can he bring an action for specific performance (*Hill v. G. N. Ry. Co.*, 2 W. R. 31, 335; 5 D. M. & G. 66; 3 W. R. 39; 24 L. J. Ch. 212).

His remedy in such a case would appear to be either by mandamus to compel the company to proceed, or by injunction to restrain them from taking possession. See *Frend & Ware, Railway Precedents*, 43.

It is not a good answer to an action for not proceeding on the notice that the capital has not been subscribed as required by section 16 of this Act (*ante*, sect. 16), for the notice to treat is not necessarily an exercise of the compulsory powers (*Guest v. Poole & Bournemouth Ry. Co.*, L. R. 5 C. P. 553; 39 L. J. C. P. 329).

Nor is it an answer to such an action that the company have no funds at all (*Id.* and see *R. v. Commissioners of Woods & Forests*, 15 Q. B. 711).

Tenant
entering
after notice.

It would seem that where a company has served notice on an owner and his tenant and a new tenant is admitted without knowledge of the notice, the new tenant is entitled to a fresh notice (*Carter v. Gt. E. Ry. Co.*, 8 L. T. N. S. 197; 9 Jur. N. S. 618).

Owner cannot
deal with
lands after
notice.

The owner's power of dealing with his property is concluded when the notice is served, and he will be restrained from selling his property (*Metropolitan Ry. Co. v. Woodhouse*, 34 L. J. Ch. 297; 13 W. R. 516).

An interest created after service of the notice will not be the subject of compensation, if the person, in whose favour the interest is created, is aware of the notice (*Re Marylebone Improvement Act*, 12 Eq. 389; *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78. See, too, *S. W. Ry. Co. v. Coward*, 5 R. C. 703; *Carnochan v. Norwich & Spalding Ry. Co.*, 26 B. 169; *City of Glasgow Union Ry. Co. v. McEwen & Co.*, 8 Ct. Sess. Cas. 3rd Ser. 747).

Notice fol-
lowed by
ascertainment
of price con-
stitutes a
contract.

When the price has been ascertained the parties are in the same position as under an ordinary contract, and specific performance must be enforced in the Chancery Division and not by mandamus (*Mason v. Stokes Bay Co.*, 32 L. J. Ch. 110; 11 W. R. 80; *Regent's Canal Co. v. Ware*, 23 B. 575; *Harding v. Metr. Ry. Co.*, 7 Ch. 154).

It has been held, however, that an agreement by a company to pay a tenant for life a fixed sum and to summon a jury to find a verdict for that amount may be enforced by mandamus where the company neither paid the money nor summoned the jury (*R. v. Irish S. E. Ry. Co.*, 1 Ir. C. L. 119).

It would seem to be unnecessary that there should be any agreement as to the price which would be binding under the Statute of Frauds if the price has in fact been agreed upon or ascertained (*Ex parte Hawkins*, 13 Sim. 569; *Galliers v. Allen*, *ib.* 577 n.; *Watts v. Watts*, 17 Eq. 217. See *Smith v. Dublin & Bray Ry. Co.*, 3 Ir. Ch. 225).

Conversion.

Whenever a valid contract has been constituted between a landowner and a company, of which the court would enforce specific performance, the land is converted as between real and personal representatives (*Re Manchester & Southport Ry. Co.*, 19 Beav. 365 and cases *supra*, and see *Re Wootton's Trusts*, 1 N. R. 193; 7 L. T. N. S. 620).

Of course notice followed by an offer to sell at a certain price which is not accepted by the company before the landowner's death creates no binding contract, and will not convert the land (*Ex parte Arnold*, 8 L. T. N. S. 623; 9 Jur. N. S. 883; 32 Beav. 591).

A mere notice to treat given to persons who have an absolute power of appointment and acquiesced in by them does not amount to a contract to execute the power (*Morgan v. Milman*, 3 D. M. & G. 24).

But where there is a contract to sell by a person having an absolute power of appointment, and the price is fixed, the contract is complete, and the power will be considered executed (*In re Dyke's Estate*, 7 Eq. 337).

Second notice.

The first notice does not exhaust the powers of the company. They may by another notice require additional lands, so long as they are within the limits of deviation (*Stamps v. Birmingham, Wolverhampton, & Stour Valley Ry. Co.*, 7 Hare, 251; 17 L. J. Ch. 421; 6 R. C. 123; *Simpson v. Lancaster & Carlisle Ry. Co.*, 15 Sim. 580; 4 R. Ca. 325; *Williams v. South Wales Ry. Co.*, 3 De G. & S. 354; 13 Jur. 443).

And they may take mines after they have taken the surface (*Errington v. Metr. Dist. Ry. Co.*, 19 Ch. D. 559).

The effect of the service of a counter notice by the landowners under section 92, requiring the company to take the whole of any building is that the company may refuse to take the whole, and may withdraw the original notice (*R. v. L. & S. W. Ry. Co.*, 12 Q. B. 776; *R. v. Wycombe Ry. Co.*, 28 Beav. 104).

On the other hand, the landowner may withdraw his counter notice before it is accepted, and thereupon the original notice if not previously withdrawn by the company revives (*Pinchin v. London & Blackwall Ry. Co.*, 1 K. & J. 36; 3 W. R. 52, 125; 5 D. M. & G. 851; *Ex parte Quicke*, 12 L. T. N. S. 580; 13 W. R. 924; *Grierson v. Cheshire Lines Committee*, 19 Eq. 83).

Where a notice has been given before the compulsory powers expire, and the owner gives a counter-notice, the company may proceed after the compulsory powers have expired to have the value of the whole assessed by a jury (*Pinchin v. London & Blackwall Ry. Co.*, 1 K. & J. 36; 5 D. M. & G. 851; *Schwings v. London & Blackwall Ry. Co.*, 3 Sm. & G. 30; 24 L. J. Ch. 405). And the case would be the same if the counter-notice were not given till the compulsory powers have expired; cases, *supra*.

The company must do some act to signify their assent to the counter-notice if they intend to act upon it, but when this has been done no further notice is necessary (*Pinchin v. London & Blackwall Ry. Co.*, 6 D. M. & G. 851; *Schwings v. Same*, 3 Sm. & G. 30).

Notice by the company of their intention to appoint a surveyor to fix the value of the premises comprised in the counter-notice is not an acceptance of the counter-notice (*Grierson v. Cheshire Lines Committee*, 19 Eq. 83).

It would seem that after notice to treat and counter-notice, though the company might abandon their notice to treat they would not be entitled to alter their plans and escape taking the land by tunnelling underneath it (*Sparrow v. Oxford, &c., Ry. Co.*, 2 D. M. & G. 94; 21 L. J. Ch. 731).

If the counter-notice is bad, the company may disregard it and proceed under their original notice (*Harvie v. S. Devon Ry. Co.*, 23 W. R. 202; 31 L. T. N. S. 424; 32 ib. 1; *Tiverton, &c., Ry. Co. v. Loosemore*, 22 Ch. D. 25; 9 App. C. 480).

Where a company gives an invalid notice to treat, and the landowner serves a counter-notice under sect. 92, and the company proceed with their works on the belief that the landowner is willing to sell the whole of the premises comprised in the counter-notice, they will not be restrained by injunction from proceeding under the counter-notice (*Pinchin v. London & Blackwall Ry. Co.*, 5 D. M. & G. 851).

There seems to be no reason to doubt that a railway company which has wrongfully taken possession of land, and has erected works upon it, whether acting under its statutory powers or not, will be restrained by injunction from continuing in possession, and that the owner will not be compelled to proceed under section 68 (*Perks v. Wycombe Ry. Co.*, 10 W. R. 789; 3 Giff. 682. See *Goodson v. Richardson*, 10 Ch. 221, where *Deere v. Guest*, 1 M. & Cr. 516, is explained).

And now by section 25 of the Judicature Act, 1873, sub-section 8, the court is empowered to grant injunctions in cases of apprehended trespass, where the Court of Chancery would not formerly have done so.

The granting an injunction is in all cases discretionary, and it will not be granted upon vague allegations of title where the damage to the company might be irreparable, while the owner might obtain all the relief to which he is entitled by ejectment or trespass (*Webster v. S. E. Ry. Co.*, 1 Sim. N. S. 272; 6 R. C. 698. See, too, *Lind v. Isle of Wight Ferry Co.*, 1 N. R. 13, where an injunction was refused, the owner having taken the law into his own hands by pulling down the company's works, and having unnecessarily delayed his application to the court; and see *Wood v. Charing Cross Ry. Co.*, 33 Beav. 290).

A person purchasing an interest in the land after notice to the owner has no right to interfere with the possession of the company, he being but the purchaser of an interest in the purchase-money (*Carnochan v. Norwich & Spalding Ry. Co.*, 26 Beav. 169).

Where a company has exceeded its powers of taking land, but the lands taken in excess are small in quantity or value, it seems damages would be given, and not an injunction (*Douling v. Pontypool, Caerleon, & Newport Ry. Co.*, 18 Eq. 714. See, too, as to the considerations which influence the court in granting injunctions, *Garrett v. Banstead & Epsom Downs Ry. Co.*, 13 W. R. 878; *Munro v. Wichenhoe & Brightlingsea Ry. Co.*, ib. 880; *Wood v. Charing Cross Ry. Co.*, 33 Beav. 290).

19. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent

8 Vict. c. 18,
s. 19.

Effect of
counter-
notice under
sect. 92.

After power
have expired.

Acceptance
of counter-
notice.
Invalid
counter-
notice.

Wrongful
entry.

Apprehended
trespass.

Injunction is
discretionary.

Purchaser
after notice
not entitled to
injunction.

Service of
notices on
owners and
occupiers of
lands.

8 Vict. c. 18,
ss. 20, 21.

inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Where the special Act requires service upon a testamentary guardian, service on a next friend is, of course, insufficient (*Earl of Harrington v. Metropolitan Ry. Co.*, 13 L. T. N. S. 658).

Mode of
service.

A notice to treat with a tenant delivered to the landlord is not binding on the tenant, and therefore not on the company (*R. v. Gr. N. Ry. Co.*, 2 Q. B. D. 151).

Service on the occupier on behalf of the owner can only be made if the owner is absent from the United Kingdom or cannot be found (*Shepherd v. Corporation of Norwich*, 30 Ch. D. 553).

Service on the occupier of a part of the land is not a sufficient service on the owner (*ib.*).

Where notice is served on the occupier for the owner, the notice should show that this is the case (*ib.*).

As to whether the landowner can adopt an invalid notice to treat and enforce it against the company, see *ib.*

Service of
notice on a
corporation
aggregate.

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail
to treat, or in
case of dis-
pute, question
to be settled
as after
mentioned.

21. If, for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Counter
notice must
be given
within rea-
sonable time.

The term of 21 days does not, it seems, apply to a counter-notice under section 92, but in such a case the company must have a reasonable time to come to terms (*Schwinge v. London & Blackwall Ry. Co.*, 3 Sm. & G. 30).

A claim addressed to the "Blackburn & Clitheroe Ry. Co." whose real name was the Blackburn Ry. Co., was held sufficient (*Eastham v. Blackburn Ry. Co.*, 9 Ex. 758).

The particulars required under this section, and the notice stating the nature of the claimant's interest under sections 23 and 68 are substantially the same.

What par-
ticulars
should be
given.

The claimant should state such particulars as will enable the company to meet the claim by ascertaining the true value of the land (*Healey v. Thames Valley Ry. Co.*, 13 W. R. 44; 10 Jur. N. S. 1182; 34 L. J. Q. B. 52; 5 B. & S. 769. See 7 B. & S. 836).

A notice describing the land in respect of which the claim is made as "leasehold" is insufficient (*ib.*).

Where a claim was made in respect of loss of business suffered during the construction of the line, the injury being past, and the amount of the claimant's interest in the land therefore immaterial, it was held that a notice describing the claimant as "occupier" and the business as injuriously affected, was sufficient (*Cameron v. Charing Cross Ry. Co.*, 12 W. R. 803; 16 C. B. N. S. 430; explained in *Healey v. Thames Valley Ry. Co.*, 13 W. R. 44; 10 Jur. N. S. 1182).

So a description of lands as "held for any term at the tenant's option, but not beyond the term and interest of A, which will expire in 1831," would probably suffice (*In re King's Leasehold Estates; Ex parte East of London Ry. Co.*, 16 Eq. 521). 8 Vict. c. 18, ss. 22, 23.

In a Scotch case, where a tenant claimed 90l. as yearly and permanent damages during the remaining years of his lease, it was held that the claimant was bound to state his claim so that the full amount could be paid at once, and that no action could be brought upon the claim as stated (*Falconer v. Aberdeen Ry. Co.*, 15 Sc. Sess. Cas. (2nd Ser.) 352).

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices. Disputes as to compensation where the amount claimed does not exceed 50l. to be settled by two justices.

The assessment of compensation by two justices under this section at the instance of the company for lands taken, or for damage under section 6 of the Railways Clauses Act, is not an order on complaint within the Summary Jurisdiction Act, 1848 (*Jervis' Act*), 11 & 12 Vict. c. 43, sect. 11, and the assessment need not be made within six months after the notice to treat (*R. v. Hannay*, 44 L. J. M. C. 27; *R. v. Edwards*, 13 Q. B. D. 586, overruling *Re Edmundson*, 17 Q. B. 67; *Reg. v. Leeds & Bradford Ry. Co.*, 18 Q. B. 343). *Jervis' Act*.

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided. Compensation exceeding 50l. to be settled by arbitration or jury, at the option of the party claiming compensation.

The compensation contemplated by this and the following sections of the Act is a compensation in money, and under the Act an arbitrator can award nothing but money. Compensation must be a money compensation.

He has no power to set out approaches to lands not taken in lieu of communications formerly existing (*In re Ware*, 9 Ex. 395).

Nor can he apportion rent where only part of leasehold premises are taken (*ib.* See, too, *In re Byles*, 11 Ex. 464).

So a sum of money cannot be awarded for the expenses to be incurred by an owner in building a bridge to connect several parts of his property (*R. v. S. Wales Ry. Co.*, 13 Q. B. 988).

This section applies to arbitrations under section 68 (*Evans v. Lancashire & Yorkshire Ry. Co.*, 1 E. & B. 754; 22 L. J. Q. B. 254).

The right to proceed under this section is not lost because the owner sends in no claim, and the company proceeds under section 85, unless the money has been actually paid or tendered (*R. v. Metropolitan Ry. Co.*, 13 L. T. N. S. 444).

As to the notice of the nature of the interest of the claimant, see *ante*, notes to section 21. Notice of interest.

8 Vict. c. 18,
ss. 24, 25.

Time for
award.

Time
extended by
consent.

An award made after the statutory period has expired is out of time (*Evans v. Lancashire & Yorkshire Ry. Co.*, 1 E. & B. 754).

But the provisions of the Common Law Procedure Act, 1854, with regard to remitting matters to the reconsideration of the arbitrator and enlarging the time for making the award, apply to arbitrations under this Act, where both parties have appointed arbitrators under section 25, and the court has jurisdiction to extend the time, but will not after a serious delay exercise it so as to deprive the landowner of a trial by jury (*In re Dare Valley Ry. Co.*, 4 Ch. 554).

The three months run from the date of the appointment of the umpire (*Pullen & Corporation of Liverpool*, 51 L. J. Q. B. 285).

The arbitrator may, with the consent of the parties, make his award after the three months have expired (*In Re Palmer & The Metropolitan Ry. Co.*, 10 W. R. 714; 31 L. J. Q. B. 259; *Caledonian Ry. Co. & Lockhart*, 3 Macq. 808).

Where proceedings by arbitration prove abortive, the owner need not proceed under section 68, but may compel the company to issue a warrant to summon a jury (*Ex parte Senior*, 7 D. & L. 36; 18 L. J. Q. B. 333).

The proper course in such a case is to apply for a *mandamus* to compel the company to summon a jury under this section (*Lind v. Isle of Wight Ferry Co.*, 1 N. R. 13).

No precise or formal notice of his demand for a jury is required to be given by the landowner, but enough must appear to satisfy the court that the company refuse to issue their warrant before a *mandamus* will issue (*Ex parte Senior*, 7 D. & L. 36).

Method of
proceeding
for settling
disputes as
to compensation
by
justices.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

As to the applicability of the Summary Jurisdiction Act, 11 & 12 Vict. c. 43, to orders made upon complaints under this Act, see *ante*, section 22.

Appointment
of arbitrator
when ques-
tions are to be
determined by
arbitration.

[For mode of
appointment
of arbitrator
by railway
company, see
Railways
Clauses Act,
1845, 8 Vict.
c. 20, s. 126.]

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter

so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

8 Vict.
c. 18, s. 25.

Where the parties agree to refer a question of disputed compensation in pursuance of the arbitration clauses in this Act, and the appointment of an arbitrator on the part of the company is signed by their secretary, an award under this submission is valid, notwithstanding all the preliminary forms required by this Act have not been complied with, those forms being necessary only when the arbitration is compulsory (*Collins v. South Staffordshire Ry. Co.*, 21 L. J. Ex. 247; 7 Exch. 5).

Arbitration
under the
Act.

Where the company and the landowner agree that an arbitrator shall be nominated by two other persons, the arbitration cannot be considered a compulsory arbitration under the Act (*Martin v. Leicester Waterworks Co.*, 3 H. & N. 463).

It has been said that it is the duty of the claimant, when the amount claimed is not paid or agreed to be paid within twenty-one days, as provided by section 68, to attempt to procure the appointment of a single arbitrator, before nominating one arbitrator on his behalf (*Yates v. Mayor of Blackburn*, 29 L. J. Ex. 447; 6 H. & N. 61).

Sole
arbitrator.

But if two arbitrators and an umpire have been appointed, the award will not be bad because no attempt has been made to appoint a single arbitrator (*Eagle v. Charing Cross Ry. Co.*, 36 L. J. C. P. 297).

A nomination or appointment of an arbitrator is incomplete until the appointment is actually made and delivered to the arbitrator, and notice of the appointment has been given to the other side; mere notice of an intention to appoint a person arbitrator is not enough (*Tew v. Harris*, 11 Q. B. 7; 17 L. J. Q. B. 1; *Bradley v. London & N. W. Ry. Co.*, 20 L. J. Ex. 3; 5 Ex. 769).

Appointment
of arbitrator.

It seems that under this section an appointment by a claimant of an arbitrator to act for both parties is invalid, unless he has previously appointed an arbitrator on his own behalf, and given notice of such appointment to the company (*Bradley v. London & N. W. Ry. Co.*, 5 Ex. 769).

If either party objects to the arbitrator appointed on the other side, on the ground that he is not an impartial person, it is not enough to protest against the appointment, but it is the duty of the objecting party to retire from the arbitration (*In re Elliott & S. Devon Ry. Co.*, 2 De G. & Sm. 17).

In the case cited, the objection was that the company appointed as their arbitrator a surveyor who had been employed by them in the first instance to negotiate the purchase of the land, the value of which was in question, and the Vice-Chancellor, while saying that the surveyor ought not to have been selected, held that the claimants, although they had protested, by going on with the arbitration had waived the objection (*ib.*).

The same rule, it seems, applies where the company's arbitrator is interested as a proprietor or shareholder in the company.

The court has no jurisdiction to restrain an arbitration on the ground that the arbitrators have no jurisdiction (*North London Ry. Co. v. G. N. Ry. Co.*, 11 Q. B. D. 30; see *Pickering v. Cape Town Ry. Co.*, 1 Eq. 84).

Injunction
to restrain
arbitration.

Nor will it restrain proceedings in an arbitration undertaken in the name of a person who has given no authority to use his name (*London & Blackwall Ry. Co. v. Cross*, 31 Ch. D. 354).

But an arbitrator will be restrained from acting if he is guilty of misconduct (*Malmesbury Ry. Co. v. Budd*, 2 Ch. D. 113; *Beddow v. B.*, 9 Ch. D. 89).

Personal mis-
conduct of
arbitrator.

Where arbitrators are appointed by both parties under this section there is a "submission to arbitration by consent" within the Common Law Procedure Act (*Ex parte Harper*, 18 Eq. 539; 20 Eq. 39; *Rhodes v. Airedale Drainage Commrs.*, 1 C. P. D. 402. See, too, *Kellett v. Local Bd. of Health, Tranmere*, 34 L. J. Q. B. 87; *Bexley Local Board v. West Kent Sewerage Board*, 9 Q. B. D. 518; *In re Mackenzie*, 17 Q. B. D. 114).

"A sub-
mission by
consent."

And in such cases the court has power under the Common Law Procedure Act, 1854, to enlarge the time for making the award, and to remit matters to the arbitrator (*In re Dare Valley Ry. Co.*, 4 Ch. 554).

Enlarging
time.

8 Vict. c. 18,
ss. 26—28.

Appeal on
special case.

In the same cases the arbitrators also have power to state a special case (*Rhodes v. Airedale Drainage Commrs.*, 1 C. P. D. 402).

Since the Judicature Act, 1873, sect. 19, an appeal may be brought in the Court of Appeal from a decision of the High Court upon a special case (*In re Bidder & N. Staffordshire Ry. Co.*, 27 W. R. 540; 4 Q. B. D. 412).

The order on the special case may be either interlocutory or final, according to the nature of the case, and the time for appeal will vary accordingly (*Collins v. Vestry of Paddington*, 5 Q. B. D. 368; *Shubrook v. Tufnell*, 9 Q. B. D. 621).

Vacancy of
arbitrator to
be supplied.

26. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment
of umpire.

27. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity, appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Umpire
appointed
within three]
months.

An umpire need not be appointed under this or the following section within twenty-one days after the appointment of arbitrators is complete; he may be appointed at any time within three months after arbitrators are appointed (*Bradshaw's Arbitration*, 12 Q. B. 562; 5 R. C. 527; 12 Jur. 998; 17 L. J. Q. B. 362; *Holdsworth v. Barsham*, 31 L. J. Q. B. 145; *S. C. nom. H. v. Wilson*, 32 L. J. Q. B. 289; 4 B. & S. 1).

It seems an award made in part by arbitrators and in part by the umpire is bad (*Tollet v. Saunders*, 9 Pr. 612).

Board of
Trade em-
powered to
appoint an
umpire on
neglect of the
arbitrators, in
case of rail-
way com-
panies.

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case*, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

The words in italics are repealed by the Lands Clauses (Umpire) Act, 1883, 46 Vict. c. 15.

Upon this section see the notes to section 131 of the Companies Clauses Act, 1845, *ante*, p. 121.

See as to arbitrations by the Board of Trade, the Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, ss. 30—33, and 32 & 33 Vict. c. 18 (Lands Clauses Consolidation Act, 1863), s. 2, which repeals section 33 of the said Act.

See also the Board of Trade Arbitrations, Inquiries, &c. Act, 1874, 37 & 38 Vict. c. 40, s. 6. That section empowers the Board of Trade to appoint the Railway Commissioners arbitrators or umpire, but does not apply to any case in

which an application is made to the Board of Trade for the appointment of an umpire under this section.

8 Viet. c. 18,
ss. 29—32.

As to the time within which an umpire should be appointed, see *ante*, section 27.

29. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin *de novo*.

30. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

The mere fact that one of the arbitrators does not attend is not a refusal within this section (*In re Hawley & N. Staffordshire Ry. Co.*, 2 De G. & S. 33).

Failure to attend.

Delay in making an award, because an arbitrator takes a mistaken view of the law, would seem to be neglect to act within this section (*Willoughby v. W.*, 9 Q. B. 923).

Delay.

Where an arbitrator refuses to act, the other may act *ex parte*, though no umpire has been appointed (*Shepherd v. Corporation of Norwich*, 30 Ch. D. 552).

31. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

The three months for the umpire commence from the time when the duty devolves upon him (*Sherratt v. N. Staffordshire Ry. Co.*, 2 Ph. 475; 5 R. C. 166; *Bradshaw's Arbitration*, 12 Q. B. 562; 5 R. C. 527).

If the time for the arbitrators to award expires, and an umpire is afterwards appointed, the time for the umpire to award runs from his appointment (*Fullen & Corp. of Liverpool*, 51 L. J. Q. B. 285).

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power of arbitrators to call for books, &c.

The evidence should be taken upon oath in the usual way, though this may be waived by the parties (*Wakefield v. Llanelly Ry. & Dock Co.*, 34 Beav. 245; *Bottomley v. Ambler*, W. N. 1877, p. 245).

Evidence.

An opportunity ought to be given to the parties to adduce evidence, and the award will be bad if no such opportunity is given, unless it appears that no evidence is intended to be adduced (*In re Hawley & N. Staffordshire Ry. Co.*, 2 De G. & S. 33).

The arbitrators may, it seems, consult experts, and call in valuers to assist them (*Caledonian Ry. Co. v. Lockhart*, 3 Macq. 808, p. 823).

Experts.

If one of the parties withdraws from the meeting without offering evidence, or asking for another appointment, the umpire may proceed *ex parte* (*Tryer v. Shaw*, 27 L. J. Ex. 320; *Solomon v. S.*, 28 L. J. Ex. 28).

Proceeding *ex parte*.

And a party refusing to attend and giving no reasons for delay will be admitted

Refusal to attend.

8 Vict. c. 18, ss. 33, 34. to be heard only on payment of the costs incurred (*In re Hewitt & Portsmouth Waterworks Co.*, 10 W. R. 780).

The attendance of witnesses may be compelled by an order of course, made upon a certificate setting forth the names of the witnesses necessary to prove the case, and it is not necessary for this purpose to make the submission a rule of court (*Davey v. Railway Passengers Assurance Co.*, W. N. 1880, pp. 30, 69; 49 L. J. Ch. 236).

Arbitrator or umpire to make a declaration.

33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration: that is to say,

"I *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*]. *A. B.*

"Made and subscribed in the presence of _____."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

The declaration under this section may be made before any justice of the peace, and need not be made before a justice for the county where the lands are situated (*Davies v. S. Staffordshire Ry. Co.*, 2 L. M. & P. 599; 21 L. J. M. C. 62).

Delay in making the declaration is immaterial if it is made before the consideration of the matters referred (*In re Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. Q. B. 362).

And it may be dispensed with by consent (*Palmer v. Metropolitan Ry. Co.*, 21 L. J. Q. B. 259).

Costs of arbitration, how to be borne.

[By the L. C. C. Act, 1869, 32 & 33 Vict. c. 18, costs may be taxed by master.]

Costs of preliminary negotiations.

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

It will be noticed that the costs given by this section are only costs of and incidental to the arbitration. Such costs would, therefore, not include the costs of preliminary negotiation, &c., which should be expressly provided for (see *ante*, section 6).

The expression "costs of the reference" have been held to include the costs of the award (*In re Walker & Son and Brown*, 9 Q. B. D. 431).

Arbitration under Acts incorporating L. C. Acts.

The words "any such arbitration" refer not merely to arbitrations under the Lands Clauses Act, but also to arbitrations to be conducted in a particular manner under a special Act incorporating the Lands Clauses Act where no provision is made for the costs of arbitrations under the special Act (*Sharpe v. Metropolitan District Ry. Co.*, 4 Q. B. D. 645; 5 App. C. 425).

Public Health Act, 1875.

An arbitration in respect of lands taken under the Public Health Act, 1875, is not an arbitration under sections 179 and 180 of that Act, but is regulated by the provisions of the Lands Clauses Act, incorporated by section 176; and the costs are not in the discretion of the arbitrator (*Ex parte Rayner*, 47 L. J. Q. B. D. 660; 3 Q. B. D. 446).

But a reference under an agreement entered into with the promoters before the passing of the Act authorizing the undertaking and incorporating the Lands Clauses Act, is not within the provisions of section 34 as to costs (*Catling v. Gt. N. Ry. Co.*, 18 W. R. 121).

Costs where no offer made.

The landowner is entitled to costs under this section, where no offer has been made by the company (*Martin v. Leicester Waterworks Co.*, 3 H. & N. 463).

Costs not settled in the award.

In *London & N. W. Ry. Co. v. Quick*, 5 D. & L. 685; 5 R. C. 520, it was held that the amount of the costs must be settled in the award. But this decision has

been overruled, and it is now settled that the costs under this section may be determined either by the arbitrators, or the umpire if he has been called upon to act, and that the adjudication of costs need not be within three months after the reference (*Gould v. Staffordshire Potteries Waterworks Co.*, 5 Ex. 214).

Where there is an agreement not under the Act to refer, and nothing is said as to costs, the claimant is not entitled to costs under the Act (*Ex parte Reynal*, 5 R. C. 60).

Where the award gives more than the company offered with regard to part of a claim, and nothing with regard to other part as to which the company has made no offer, the company will have to pay only the costs incident to that part of the claim for which compensation has been awarded (*R. v. Biram*, 17 Q. B. 969; 16 Jur. 640).

The comparison should be made between the total sum offered and the total sum assessed, and not between the several items of which the totals are composed (*Hayward v. Metropolitan Ry. Co.*, 12 W. R. 577; 4 B. & S. 787).

The offer must be an unconditional offer of compensation, and must not be an offer of one sum for compensation and costs (*Ball v. Metropolitan Bd. of Works*, L. R. 1 Q. B. 337).

Where the company give notice of their intention to summon a jury under section 38, and make an offer of the sum they are willing to pay, and the landowner gives notice of his desire to have the compensation fixed by arbitration, the company may increase their offer at any time before the arbitrators are appointed (*Fitzhardinge v. Gloucester & Berkeley Canal Co.*, L. R. 7 Q. B. 776; 41 L. J. Q. B. 316).

But an offer made after the arbitrators are appointed is too late (*Fitzhardinge v. Gloucester & Berkeley Canal Co.*, L. R. 7 Q. B. 776; *Gray v. N. E. Ry. Co.*, 1 Q. B. D. 696).

By the Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18), the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior courts of law.

Section 1 of the Lands Clauses Consolidation Act, 1869, applies only to arbitrations conducted entirely under the Act. It does not apply to arbitrations in pursuance of agreements entered into before the passing of the statute (*Doullon v. Metropolitan Bd. of Works*, L. R. 5 Q. B. 333).

And the parties may by contract exclude the operation of that section, as, for instance, by an agreement that the company are to bear all the expenses of the owner as between solicitor and client. In such a case the costs may be taxed under section 38 of the Attorneys and Solicitors Act (*Wombwell v. Corporation of Barnsley*, 36 L. T. N. S. 708).

The taxing master is not bound to tax the costs where the claimant is not entitled to his costs under section 34 (*Fitzhardinge v. Gloucester & Berkeley Canal Co.*, L. R. 7 Q. B. 776).

Where the costs under this section have been taxed and settled under the Lands Clauses Consolidation Act, 1869, the court has no jurisdiction over the taxation (*Sandbach Trustees v. N. Staffordshire Ry. Co.*, 3 Q. B. D. 1).

Costs to which a claimant is entitled under this section may be recovered by action (*Martin v. Leicester Waterworks Co.*, 27 L. J. Ex. 432; *Collins v. S. Staffordshire Ry. Co.*, 7 Ex. 5; *Vates v. Mayor of Blackburn*, 29 L. J. Ex. 447).

And where the claimant is entitled to costs under this section, an action may be brought to recover the costs before taxation (*Sharpe v. Metropolitan District Ry. Co.*, 4 Q. B. D. 645; 5 App. C. 425. See *Catling v. Gt. N. Ry. Co.*, 21 L. T. N. S. 17; 18 W. R. 121).

Costs are payable within a reasonable time after the award, and where the arbitration relates to the value of land taken, the execution of a conveyance is not a condition precedent to payment of costs (*Capell v. Gt. N. Ry. Co.*, 11 Q. B. D. 345).

The payment of the costs may be enforced under 1 & 2 Vict. c. 110, s. 18; but the court will not in a doubtful case grant a rule under that section, but will leave the claimant to his remedy by action (*London & N. W. Ry. Co. v. Quick*, 5 D. & L. 685; 5 R. C. 620. See *Gould v. Staffordshire Potteries Waterworks Co.*, 5 Ex. 214, p. 221; *Mackenzie v. Sligo & Shannon Ry. Co.*, 9 C. B. 250).

A vendor has no lien on the land sold for the costs of the arbitration fixing the purchase-money (*Earl Ferrers v. Stafford & Uttoxeter Ry. Co.*, 13 Eq. 524).

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense,

8 Vict.
c. 18, s. 35.

Offer may be increased.

Taxation of costs.

Master not bound to tax where no right to costs.

Action for costs.

Payment of costs under 1 & 2 Vict. c. 110.

Lien for costs.

Award to be delivered to the promoters of the undertaking.

8 Viet.
c. 18, s. 36.

furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission
may be made
a rule of
Court.

36. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Enforcing
award

I. The award may be enforced by action.

1. by action.

Where the award is in respect of lands compulsorily taken, no action can be maintained on it till a conveyance has been executed (*E. London Union v. Metropolitan Ry. Co.*, L. R. 4 Ex. 309).

No action
before con-
veyance.

The company may, of course, agree to pay the purchase-money before the conveyance is executed (*Lindsay v. Direct London & Portsmouth Ry. Co.*, 1 L. M. & P. 529).

2. By man-
damus.

II. Where arbitrators are appointed by both parties, and the award is made by the arbitrators or an umpire, the award may be enforced by a writ of *mandamus* requiring the company to take up the award and furnish a copy to the claimant (*Reg. v. S. Devon Ry. Co.*, 15 Q. B. 1043; 20 L. J. Q. B. 145).

Company
must pay fees.
Return to
writ.

The company must for that purpose pay the fees due on the award in respect of which the arbitrators or umpire have a lien (*ib.*).

The company may make a return to the writ raising the question whether the claimant is in law entitled to any compensation (*R. v. Cambrian Ry. Co.*, L. R. 4 Q. B. 320).

Mandamus in
Queen's
Bench Divi-
sion.

The prerogative writ of *mandamus* must be applied for by motion in the Queen's Bench Division, this jurisdiction being assigned to that division by the Judicature Act, 1873, section 34.

Effect of
Judicature
Act.

The power of granting a *mandamus* given by section 25, sub-section 8 of that Act applies only where there is a cause or matter pending before the court (*In re Paris Skating Rink Co.*, 6 Ch. D. 731).

And apparently it applies only to a *mandamus* "which may be granted to direct the performance of some act, of something to be done, which is the result of an action where an action will lie" (per Brett, L. J., *Glossop v. Heston & Isleworth Local Board*, 12 Ch. D. 102, p. 122).

3. By action
for manda-
mus.

III. It seems that the award might also be enforced by action for *mandamus* in any division of the court (see *Fotherby v. Metropolitan Ry. Co.*, L. R. 2 C. P. 188; *Morgan v. Metropolitan Ry. Co.*, L. R. 4 C. P. 97).

But this remedy is less satisfactory, than the prerogative writ issued on motion, since in an action for a *mandamus* where the *mandamus* is the chief relief sought, no *mandamus* could be granted until the hearing of the action, except under special circumstances (*Widnes Alkali Co. v. Sheffield & Midland Ry. Co.*, 31 L. T. N. S. 131).

The old Court of Chancery has no jurisdiction to direct the company to take up an award (*Sutton Harbour Co. v. Hitchens*, 16 Beav. 381; 1 D. M. & G. 161).

Where the company fails to appoint an arbitrator, and a single arbitrator has been appointed under section 25 to act on behalf of both parties, there appears to be some doubt whether the company can be compelled by *mandamus* to take up the award (*R. v. Midland Ry. Co.*, 10 W. R. 583).

4. Award
made a rule
of Court.
Submission
made a rule
on motion
ex parte.

IV. The submission to arbitration under any of the provisions of the Lands Clauses Consolidation Act may be made a rule of any division of the Court under section 36 (*Ex parte Harper*, 18 Eq. 539; *In re Harper & Gt. E. Ry. Co.*, 20 Eq. 39). The proper course under the present practice is to make the submission a rule of court, which may be done *ex parte* at chambers (*In re Oglesby's Arbitration*, W. N. 1879, p. 151; *Jones v. Jones*, 14 Ch. D. 593; *Re Davey*, 49 L. J. Ch. 568. See the old practice stated in Russell on Awards, 577, 578).

By Order 61, rule 31, submissions to arbitration made orders of the court are to be transmitted to and left at the central office.

If the submission is made a rule of court it would seem that the award can be enforced by order, though the award has not been made a rule of court (*Jones v. Wedgewood*, 19 Ch. D. 56; *In re Forrest*, 19 Ch. D. 57).

Proof of
signature to
submission.

The signature of the parties to the submission should be proved by the affidavit of the attesting witness; but if such an affidavit cannot be procured it may be dispensed with (*Re Dierden*, 12 W. R. 978).

In order to make the submission a rule of court, the appointment of both arbitrators should be produced and verified by affidavits.

An order may be procured on summons to compel either party to produce the

appointment of an arbitrator (*In re Corporation of Huddersfield & Jacomb*, 17 Eq. 476, 481).

If the landowner refuses to produce the document appointing his arbitrator, for the purpose of making the submission a rule of court, the court will allow the order to be drawn up on secondary evidence of the appointment (*In re Hawley & N. Staffordshire Ry. Co.*, 2 De G. & S. 33; *Pleus v. Middleton*, 6 Q. B. 345; *Midland Ry. Co. v. Hemming*, 11 Jur. 904).

For the form of order making the submission a rule of court, see Seton, 4th edition, 1415.

Neither the appointment of the umpire nor the award need be made a rule of court (*In re Bradshaw's Arbitration*, 12 Q. B. 562; 5 R. C. 527).

When the submission has been made a rule of any division of the court, subsequent proceedings must be taken before that division (*In re Lomax's Arbitration*, 28 W. R. 485).

A submission with reference to matters not within the Act cannot be made a rule of court under this section (*In re Ware*, 9 Ex. 395).

But deviations from the provisions of the Act by agreement between the parties in technical matters of procedure would not, it would seem, take the arbitration out of the Act (see *ante*, sections 25, 34; and see *Rhodes v. Airedale Drainage Commrs.*, L. R. 9 C. P. 508; on appeal, 1 C. P. D. 402).

When a submission has been made a rule of any division of the court under this section, that division has the same power of enforcing or discharging the award by order made upon motion as in cases under 9 & 10 Will. III. c. 15 (*In re Harper & Gt. E. Ry. Co.*, 20 Eq. 39).

Under Order LXIV. Rule 14, applications to set aside awards may be made at any time before the last day of the sittings next after the award has been made and published, altering the practice established by *College of Christ v. Martin*, 3 Q. B. D. 16; *Smith v. Parkside Co.*, 6 Q. B. D. 67.

Service of a notice of motion to set aside the award within the proper time is sufficient, though the motion may not be heard till after the time has elapsed (*Corporation of Huddersfield v. Jacomb*, 10 Ch. 92).

The notice of motion should state the grounds upon which the award is sought to be set aside (*Mercier v. Pepperell*, 19 Ch. D. 58).

An objection to an award on the ground of improper conduct by the arbitrators could not formerly be pleaded to an action on the award. The proper course was to move to set aside or refer back the award (see *Thorburn v. Barnes*, L. R. 2 C. P. 384).

It has been said that in a doubtful case an award will not be set aside on motion (*Wilts, Somerset & Weymouth Ry. Co. v. Fooks*, 3 Ex. 729, where an umpire was appointed by the railway commissioners by a document not under seal and signed by a person not described as secretary to the Board, and the award directed the claimant's costs to be paid under the Lands Clauses Consolidation Act without finding whether the sum awarded was greater or less than the sum offered by the company).

Where the submission has been made a rule of court, and a sum has been awarded, the company may be directed to pay such sum under 1 & 2 Vict. c. 110, s. 18 (*Lindsay v. Direct London & Portsmouth Ry. Co.*, 1 L. M. & P. 529).

Where both parties have appointed arbitrators, the arbitration is within the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125). The submission may therefore be made a rule of any division of the Court under that Act, and enforced by order (*Ex parte Harper*, 18 Eq. 539; *In re Harper and Gt. E. Ry. Co.*, 20 Eq. 39; *In re Dare Valley Ry. Co.*, 4 Ch. 561; *Rhodes v. Airedale Drainage Commrs.*, 1 C. P. D. 402: overruling *In re Newbold and Metropolitan Ry. Co.*, 14 C. B. N. S. 405, and *Rhodes v. Airedale Drainage Commrs.*, L. R. 9 C. P. 508).

Where the award is made under an agreement providing that the award shall have the effect of a rule of court, the proper course is to move *ex parte* to make the submission a rule of court (*In re Oglesby's Arbitration*, W. N. 1879, p. 151; see *Jones v. J.*, 28 W. R. 133; 14 Ch. D. 593).

The time fixed by 9 & 10 Will. IV. c. 15, s. 2, does not apply to a motion to refer back an award, as to which the court has a discretion (*Leicester v. Grazebrook*, 40 L. T. N. S. 883).

Upon the question of the effect of a clause in an agreement providing that a submission to arbitration may be made a rule of court, the law stands as follows:—

An agreement to refer, if it provides that the submission may be made a rule of court, is by 3 & 4 Will. IV. c. 42, s. 29, made irrevocable, except by the leave of the court.

And any written agreement to refer can be made an order of court under the Common Law Procedure Act, 1854, sect. 17.

8 Vict.
c. 18, s. 36.

Secondary evidence of appointment.

Form of order.

Where submission not made rule of Court.

Order to enforce award.

Motion to set aside award.

Grounds of motion should be stated.

Objection to award, how taken.

Whether arbitration under the Act is within Common Law Procedure Act.

Effect of clause making submission a rule of Court.

**8 Viet.
c. 18, s. 37.**

But a submission which is made a rule of court under that section is not thereby made irrevocable, but may be revoked at any time before award (*Re Rouse & Meier*, L. R. 6 C. P. 212, *Randell v. Thompson*, 1 Q. B. D. 748; *Fraser v. Ehrenspegger*, 12 Q. B. D. 310).

At law a particular submission to arbitration is revocable (see *Re Rouse & Meier*, L. R. 6 C. P. 212).

But a provision to refer all questions which may arise under an agreement is not revocable (*Piercy v. Young*, 14 Ch. D. 200).

Award not
void through
error in form.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

A single sum may be awarded for the price and compensation for damage by severance (*Bradshaw's Arbitration*, 12 Q. B. 562).

And where the arbitrator is to assess a sum for purchase-money, and another sum for damage (if any) from severance, and the award fixes a sum for the purchase-money, and is silent as to damage by severance, the award will be good, it being assumed that the arbitrator by his silence negatives any claim for such damage (*In re Duke of Beaufort and Swansea Harbour Trustees*, 29 L. J. C. P. 241. See, however, *Wakefield v. Llanelly Ry. & Dock Co.*, 34 Beav. 245, where upon an agreement to refer to arbitration the value of leasehold premises and the damage sustained or to be sustained by the plaintiff, the arbitrator awarded a sum as compensation for all the plaintiff's interest of whatever nature in the leasehold property, and it was held that specific performance of the contract for sale could not be enforced on the ground that the award did not assess any sum in respect of damage).

Erroneous
recital.

A recital in the award that the umpire has heard the evidence produced on behalf of the company and the claimant, when the company has not produced any evidence, will not invalidate the award (*Skerratt v. N. Staffordshire Ry. Co.*, 5 R. C. 166).

Separate
awards.

Where an agreement to refer under the Act provides that the arbitrators shall determine the communications to be made, the compensation and the communications need not be determined in the same award (*Skerratt v. N. Staffordshire Ry. Co.*, 5 R. C. 166).

Direction to
pay.

It is no objection to the award that the company is directed to pay the purchase-money which has been ascertained, though such a direction is not within the powers of the arbitrator (*Lindsay v. Direct London & Portsmouth Ry. Co.*, 1 L. M. & P. 529; *In re Harper and Gt. E. Ry. Co.*, 20 Eq. 39).

Interest
valued not
stated.

An award professing to value the interest of a certain person, who has agreed to the arbitration, by appointing an arbitrator, might perhaps be good, though it nowhere appears what that interest is.

But if the interest of the claimant is not stated, an award finding the value of the fee would be bad, if it appears that there are incumbrancers entitled to compensation (*N. Staffordshire Ry. Co. and Landor*, 2 Ex. 235).

Where the award fixes one entire sum for lands which the company have given notice to take, and for lands which the owner requires the company to take under section 93, the submission on the part of the company being only as to the former lands, the award is bad (*N. Staffordshire Ry. Co. and Wood*, 2 Ex. 244).

Validity of
claim.

The arbitrator has no power to decide upon the validity of a claim, but only to assess the compensation to be made in respect of it (*R. v. London & N. W. Ry. Co.*, 3 E. & B. 443; 23 L. J. Q. B. 185; *Chapman v. Monmouthshire Ry. Co.*, 2 H. & N. 267; 27 L. J. Ex. 97; *Bradby v. Southampton Local Bd.*, 4 E. & B. 1014; 24 L. J. Q. B. 239; *Re Newbold and Metropolitan Ry. Co.*, 14 C. B. N. S. 405; *Rhodes v. Airedale Drainage Commrs.*, 1 C. P. D. 380).

Arbitrators may, of course, find that the amount of damage is nil (*Bradby v. Southampton Local Bd.*, 4 E. & B. 1014).

And it would seem that the award itself is no evidence on the question whether the damage in respect of which it is made is actionable (*Rhodes v. Airedale Drainage Commrs.*, 1 C. P. D. 380, 402).

If the award assesses one sum for several claims, some of which are bad, the whole award is bad; and though the objection may not appear on the face of the award, it may be pleaded to an action upon the award (*Beckett v. Midland Ry. Co.*, L. R. 1 C. P. 241. See *Duke of Buccleuch v. Metropolitan Bd. of Works*, L. R. 3 Ex. 300; *ib.* 5 H. L. 419).

Evidence of
arbitrator.

The evidence of an arbitrator or umpire to show the principle upon which he made his award is admissible, though the award may appear good on the face of

it (*Dare Valley Ry. Co.*, 6 Eq. 429; *Duke of Buccleuch v. Metropolitan Bd. of Works*, L. R. 5 Ex. 221; *ib.* 5 H. L. 418). 8 Vict. c. 18,
ss. 38, 39.

A landowner cannot object to an award on the ground that an assumption favourable to him has been made, as that he is owner of the fee simple in possession (*Bradshaw's Arbitration*, 12 Q. B. 562; 5 R. C. 527).

An award which is good on the face of it is not invalidated by mistakes, whether of law or of fact, such as a decision contrary to the evidence alleged to have been made by an arbitrator, but not admitted by him (*Hodgkinson v. Fernie*, 3 C. B. N. S. 189; 26 L. J. C. P. 217; 27 L. J. C. P. 66; *Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. Q. B. 362; *Dinn v. Blake*, L. R. 10 C. P. 388. See *Duke of Buccleuch v. Metropolitan Bd. of Works*, L. R. 5 Ex. 221, p. 232; and see *Carr v. Metr. Board*, 14 Ch. D. 807). Mistake of
law or fact.

But if the arbitrator himself admits a mistake, the award will be sent back to him (*Mills v. Bowyer's Co.*, 3 K. & J. 66; *Flynn v. Robertson*, L. R. 4 C. P. 324).

So too if it is shown that the arbitrator has exceeded his jurisdiction, the award may be sent back (*In re Dare Valley Ry. Co.*, 6 Eq. 429. See *Dinn v. Blake*, L. R. 10 C. P. 388).

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Promoters of the undertaking to give notice before summoning a jury.

It has never been decided whether the company can, without the landowner's consent, withdraw a notice of their intention to summon a jury (*Fitzhardinge v. Gloucester & Berkeley Ry. Co.*, L. R. 7 Q. B. 776, 782).

It has been held that where the owner, proceeding under section 68, requires the company to summon a jury, the company may summon a jury without giving notice to the owner under this section (*Railstone v. York, Newcastle & Berwick Ry. Co.*, 19 L. J. Q. B. 464; 15 Q. B. 404. This decision is not inconsistent with, though it is no doubt to a certain extent shaken by, *Richardson v. S. E. Ry. Co.*, 20 L. J. C. P. 236; 11 C. B. 164; 15 C. B. 810, where it was held that section 51 is incorporated with section 68. But the earlier decision may be upheld on the ground that section 38 is expressly excluded by the terms of section 68, in cases to which that latter section applies, and it was followed in *Hayward v. Metr. Ry. Co.*, 10 Jur. N. S. 418).

Notice of intention to summon a jury.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff (a), requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested (b) in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-corer

Warrant for summoning jury to be addressed to the sheriff.

[By 31 & 32 Vict. c. 119, s. 41, questions of compensation may be tried in superior courts.]

8 Vict. c. 18, ss. 40, 41. shall have power, if he think fit, to appoint a deputy (c) or assessor.

(a) By the L. C. C. Act, 1869 (32 & 33 Vict. c. 18, s. 3), where any lands by the special Act authorised to be taken are situate within the city and liberty of Westminster, the high bailiff of the city and liberty of Westminster, or his deputy, is substituted for the sheriff throughout the enactments of the L. C. C. Act, 1845, relating to the reference to a jury.

(b) The warrant to summon a compensation jury may properly issue to the sheriff of the county where the lands are situated, although the under-sheriff is a shareholder in the company issuing the warrant (*Worsley v. South Devon Ry. Co.*, 20 L. J. Q. B. 264; 16 Q. B. 639).

Thus where the company issue their warrant to the sheriff, and the under-sheriff, who is "interested," presides, the owner cannot recover from the company the costs of the inquisition or of proceedings for quashing it on *certiorari*, the improper conduct of the inquiry not being the act of the company (*Id.*).

Where there are two sheriffs, and one of them only is interested, the process should be directed to the other (*Litsom v. Beckley*, 5 M. & S. 144. *Rex v. Warrington*, 1 Salk. 152, and the case referred to in the report of *Worsley v. South Devon Ry. Co.*, 20 L. J. Q. B. 264, at p. 257, note 4).

(c) The deputy may, and apparently ought to, sign the name of the person he represents as his deputy (*R. v. Perkin*, 7 Q. B. 165; *Stroud v. Watts*, 3 D. & L. 799).

In a case under a special Act, the provisions of which were similar to this, it was decided that the precept to the sheriff must be consistent with the notice to treat (*Stone v. Commercial Ry. Co.*, 1 R. Ca. 375, 4 M. & Cr. 122).

But if the hereditaments are differently described in the notice to treat and in the precept to the sheriff, such variance is an irregularity merely, and may be waived by appearing before the assessing jury, and proceeding with the trial after the objection has been taken and overruled (*Ex parte Crawshaw Bailey*, 1 L. & M. Bail Ct. Ca. 66).

It would seem that the company would not be entitled to issue one precept to ascertain the compensation payable to an owner and his sub-lessees, as the claim of one person might be prejudiced by being mixed up with that of another (*Abraham v. Mayor of London*, 6 Eq. 626, a case which arose upon the construction of the City Improvement Act, 1847).

But upon the construction of the same Act it was held that there was no reason why the company should not include claims by the same person in respect of distinct properties or distinct interests in one precept (*Starr v. Mayor of London*, 7 Eq. 236).

The judge who has to act under a precept or warrant, must act in strict accordance with it, and he has no discretion to depart from it in any respect (*Abraham v. Mayor of London*, 37 L. J. Ch. 732; 6 Eq. 626).

A mandamus to compel a sheriff to proceed to execute a precept to summon a jury, was issued when the sheriff, after having summoned a jury, and read the precept, was of opinion that it did not warrant him in taking their verdict, the court being of opinion that the sheriff's objection was not well founded (*Walker v. London & Blackwall Ry. Co.*, 12 L. J. Q. B. 88).

Provisions applicable to sheriff to apply to coroner.

40. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as

common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for the purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

8 Vict. c. 18,
ss. 42—44.

If the inquisition is quashed, the sheriff should proceed again under the old warrant (*Horrocks v. Metropolitan Ry. Co.*, 19 C. B. N. S. 139; *Tanner v. Swindon, &c. Ry. Co.*, 45 L. T. 209).

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Jury to be
impannelled.

A verdict of a jury summoned under this section will not be set aside on the ground that some of the jurors were not qualified to act as such. The remedy is by challenge (*In re Chelsea Waterworks Co.*, 10 Exch. 731).

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law: and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

Sheriff to
preside; wit-
nesses to be
summoned.

The words in a special Act, that the party claiming compensation should be "deemed and entitled to the same rights and privileges as plaintiffs in actions at law," are intended only "to regulate the general course of proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquisition should be conducted" (*Rex v. Gardner*, 6 Ad. & E. 112, at p. 117; *Reg. v. Sheriff of Warwickshire*, 2 R. Ca. 661).

The case before the jury must be consistent with the precept. All the proceedings must follow the terms of the precept or warrant (*Stone v. Commercial Ry. Co.*, 1 R. Ca. 375, at p. 404; *Abrahams v. Mayor of London*, 37 L. J. Ch. 732; 6 Eq. 625).

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect

Penalty on
sheriff and
jury for
default.

**8 Vict. c. 18,
ss. 45—49.**

his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on
witnesses
making
default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of
inquiry.

46. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

Notice
waived.

This provision is for the benefit of the claimant, and may be waived by him. If a claimant has acted in such a way as to lead to an inference that he not only knew of the appointment, but acquiesced in it, he will not afterwards be allowed to rely upon the absence of the statutory notice (*Long v. Glasgow Court House Commissioners*, 26th May, 1871, 9 Macp. 768).

If the party
make default
the inquiry
not to pro-
ceed.

47. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be
sworn.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Sums to be
paid for pur-
chase of lands
and for
damage to be
assessed
separately.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing

of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

8 Vict. c. 18,
s. 49.

The provision with regard to the assessment is directory only, that is to say, either the company or the claimant may call for a separate assessment of the value of the premises taken, and the satisfaction for damage, but if neither party requires a separate assessment, the jury may find one sum for the value and damage (*In re London & Greenwich Ry. Co.*, 2 A. & E. 678; 4 N. & M. 458; *Corrigal v. London & Blackwall Ry. Co.*, 5 M. & Gr. 219, 249; both cases upon similar words in special Acts).

Separate assessment.

For the purpose of stamp duty on the conveyance the whole amount awarded is the consideration (*Commissioners of Inland Revenue v. Glasgow & S. W. Ry.*, 12 App. C. 315).

Where a jury is summoned to assess the value of the interests of several persons, an inquisition finding a lump sum only is bad (*R. v. Trustees of Norwich & Walton Road*, 5 Ad. & E. 563).

Several interests.

There appears to be no substantial distinction between compensation under this section and under section 63 (*Holt v. Gaslight & Coke Co.*, L. R. 7 Q. B. 728, 736).

Where the jury are summoned to assess the value of the lands and also compensation for damage, under this section, and a lump sum is assessed, this must be considered to include the value of the land and damages for severance (*Re Hayne*, 13 W. R. 492; 12 L. T. N. S. 200).

What lump sum includes.

The value of the land to be estimated is the value it has in the hands of the owner, subject to such restrictions as there may exist upon its use, and not the value it will have in the hands of the company, freed from all restrictions (*Stebbing v. Metropolitan Ry. Co.*, L. R. 6 Q. B. 37; where *Hilcoat v. Archbishop of Canterbury*, 10 C. B. 327; 19 L. J. C. P. 376, is explained).

How value of land estimated.

In assessing the compensation for the land, and the damages to be paid for severance, any more beneficial use to which the land might in the course of events be applied, may be considered. Thus, where agricultural land, which might have become valuable for building, is severed, so as to be useless for building, this depreciation may be taken into consideration (*Reg. v. Brown*, L. R. 2 Q. B. 630).

Probable increase in value.

The fact that magistrates can order accommodation works, under sections 68 and 69 of the Railways Clauses Consolidation Act, is not to be considered in such a case, as magistrates could have ordered accommodation works only for the purposes of the land as it was at the time of the order. (*Ib.*)

It is now settled that where part of an owner's property is taken, he may recover for the depreciation in the value of the rest, and in estimating the depreciation all the circumstances of the case, such as loss of privacy, and increase of dust and noise, from the working of the undertaking upon the land taken, may be considered (*Duke of Buccleuch v. Metropolitan Bd. of Works*, L. R. 5 H. L. 419. The case of *In re Stockport, Timperley & Altringham Ry. Co.*, 33 L. J. Q. B. 251, which has been sometimes doubted, would seem to come under this head).

When damages for loss of amenity recoverable.

The award or inquisition would, however, probably be bad, so far as it fixed separate sums as compensation for vibration, noise, dust, &c., after the works are completed (*Duke of Buccleuch v. Metropolitan Bd. of Works*, L. R. 5 H. L. 419, p. 458. See *post*, notes to section 68).

Compensation is not, however, payable for injuriously affecting land which is separated from the land taken by intervening land belonging to other owners (*R. v. Essex*, 17 Q. B. D. 447).

Land injured must be adjacent.

Where lands were used as a rifle range, and lands behind the butts were taken, the lessees of the range were held entitled to compensation for the discontinuance of the rifle range, though between the land taken and the butts a piece of land intervened, which the lessees were entitled to shoot over only, under a parol agreement determinable without notice (*Holt v. Gas Light and Coke Co.*, L. R. 7 Q. B. 728).

Where the premises taken are in lease, and the lease contains a covenant by the lessee not to sell any beer other than that purchased of the landlord, the additional value of the premises, by reason of the covenant, may be taken into consideration (*Bourne v. Mayor of Liverpool*, 33 L. J. Q. B. 16).

Value of restrictive covenant in lease.

And where an owner had constructed a reservoir to supply cotton mills intended to be built on his neighbouring land, which was taken by the company, it was held that he might claim compensation for the loss of profit from the supply of water (*Ripley v. Gl. N. R. Co.*, 10 Ch. 435).

Loss of profits from supply of water to lands taken.

Where an owner, having received a notice to treat for his premises, takes other premises in consequence, and the company delay in completing, the owner will be entitled to substantial compensation in respect of the double rent he is compelled to pay (*Morgan v. Metropolitan Ry. Co.*, L. R. 3 C. P. 553; 4 ib. 97).

Delay in completion.

Where a man intends to transfer his business to a house taken by the company,

Goodwill.

§ Vict. c. 18, he is entitled to be compensated for the goodwill of the business (*White v. Commrs. of Works*, 22 L. T. N. S. 591).

Interest.

It appears doubtful whether the jury has any power to give interest where the assessment of the compensation has been delayed, at any rate if the delay is due to the landowner. If the jury do not give interest, the court has no power to direct interest to be paid (see *Caledonian Ry. Co. v. Carmichael*, L. R. 2 H. L. Sc. 54).

Future damage.

The assessment should take into consideration all the damage which can reasonably be foreseen. If any such damage is omitted, it seems, compensation cannot be subsequently claimed, nor can an action be maintained in respect of it (*Croft v. L. & N. W. Ry. Co.*, 32 L. J. Q. B. 113; 3 B. & S. 436. See per Erle, C.J., in *Chamberlain v. West-end of London & Crystal Palace Ry. Co.*, 2 B. & S. 617, 638; *Todd v. Metropolitan District Ry. Co.*, 19 W. R. 720. See *Brogden v. Llynvi Valley Ry. Co.*, 30 L. J. C. P. 61; 9 C. B. N. S. 229; *Darley Main Colliery Co. v. Mitchell*, 11 App. C. 127; and see section 68, *post*).

But the compensation awarded does not, in the absence of express agreement, include all contingent and possible damage which may arise from the works of the company, but cannot be foreseen at the date of the award (*Lawrence v. Gt. N. Ry. Co.*, 16 Q. B. 643; 6 R. C. 656; 23 L. J. Q. B. 293. See *Gt. Laxey Mining Co., v. Clague*, 4 App. C. 115).

Whether the landowner can claim additional compensation for such damage is not clear (cases *supra*, and see *Lancashire & Yorkshire Ry. Co. v. Evans*, 15 Beav. 322; *Stone v. Corporation of Yeovil*, 1 C. P. D. 691; 2 C. P. D. 99).

Verdict and judgment to be recorded.

50. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Evidence of verdict.

Under a similar provision in a private Act, where the verdict was not recorded, parol evidence of the finding and of the grounds on which the jury proceeded was admitted (*Manning v. Eastern Counties Ry. Co.*, 12 M. & W. 237).

The inquisition.

The inquisition need not set out at length all the facts the happening of which is necessary to give jurisdiction; it is sufficient if it appears from a reasonable construction of the warrant and inquisition, that a case has occurred in which jurisdiction would arise (*Taylor v. Clamson*, 2 Q. B. 978; 11 Cl. & F. 610; *Ostler v. Cooke*, 13 Q. B. 143).

Certiorari.

The proper proceeding to get rid of an inquisition is by *certiorari*, and not by writ of prohibition to prohibit the entering or recording the assessment, verdict, and judgment (*Chabot v. Lord Morpeth*, 15 Q. B. 446).

As to removing proceedings under the Act into the superior courts by *certiorari*, see section 145, *post*.

Mandamus.

It would seem that the payment of the compensation awarded by the jury cannot be enforced by *mandamus*. In *R. v. Nottingham Old Waterworks Co.*, 6 A. & E. 355, under a special Act, directing the verdict and judgment to be records for all intents and purposes, a *mandamus* was granted chiefly on the ground that no action of debt would lie. It is, however, now settled that an action lies to recover the compensation. In *R. v. Swansea Harbour Trustees*, 8 A. & E. 439, no objection appears to have been made to the *mandamus* (see too *R. v. Hull & Selby Ry. Co.*, 6 Q. B. 70).

Effect of verdict.

The verdict of the jury is conclusive as to the amount of damage, and is not subject to review by a superior court (*R. v. Eastern Counties Ry. Co.*, 2 Dowl. N. S.

945; 12 L. J. Q. B. 27; 3 R. C. 466; *R. v. London & N. W. Ry. Co.*, 3 E. & B. 443, 3 Viet. c. 18, p. 475). s. 51.

Therefore to an action to recover the compensation awarded, the company cannot plead that the plaintiff was entitled only to damages less than 50l. where more than 50l. has been claimed and assessed (*Read v. Victoria Station and Fimlico Ry. Co.*, 11 W. R. 1032; 1 H. & C. 826; 32 L. J. Ex. 167).

The jury may, of course, find that no damage has been done (*R. v. Lancaster & Preston Ry. Co.*, 6 Q. B. 759; *Bradby v. Southampton Local Board*, 4 E. & B. 1014). No damage.

But the jury have no power to determine whether the landowner has the interest he claims to have, or whether the damage he has suffered is damage in respect of which he is entitled to compensation. Upon both these heads, therefore, the verdict is not conclusive (*R. v. London & N. W. Ry. Co.*, 3 E. & B. 443; *Chapman v. Monmouthshire Ry. & Canal Co.*, 2 H. & N. 267). Jury cannot determine rights.

Nor can the jury determine whether the company are excused from the obligation to pay compensation by any collateral matter (*In re Byles and The Ipswich Dock Comms.*, 25 L. J. Ex. 53; 11 Ex. 464).

A verdict for a fixed sum taken by agreement between counsel on both sides stands upon the same footing and is no more than a verdict assessing the value of the interest claimed without reference to the right to the interest (*Re Hayne*, 13 W. R. 492; 12 L. T. N. S. 200). A verdict by consent.

Upon the principles above stated, if the jury are asked to find whether the claimant has any interest, and then to fix the compensation on the assumption that the right exists, the whole verdict is bad (*R. v. London & N. W. Ry. Co.*, 3 E. & B. 443).

To an action to recover the amount fixed by the jury, the company may plead that the owner had not the interest claimed, or that no actionable damage has been done (*Read v. Victoria Station Co.*, 1 H. & C. 826; 32 L. J. Ex. 167; *Barber v. Nottingham Comms.*, 15 C. B. N. S. 726; 32 L. J. O. P. 193; *Rhodes v. Airedale Comms.*, 1 C. P. D. 380, 402). Pleas to action on verdict.

In an action upon an inquisition which is good upon the face of it, and where a right to some compensation is established, the company cannot raise the question whether one of the items taken into account was a proper item for compensation. This question should be raised by *certiorari* (*Mortimer v. S. Wales Ry. Co.*, 1 E. & E. 376).

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry. Costs of the inquiry, how to be borne.

This section applies to proceedings originated by an owner under section 68 for lands injuriously affected (*S. E. Ry. Co. v. Richardson*, 20 L. J. O. P. 236; 21 id. 122; 11 C. B. 154; 15 O. B. 810. See *ante*, sect. 38).

But it is not incorporated with section 94 of this Act, and a landowner is not entitled to his costs of an inquiry under that section (*Cobb v. Mid Wales Ry. Co.*, L. R. 1 Q. B. 342; 35 L. J. Q. B. 117).

The company must make their offer in the notice of intention to summon a jury under section 38, and an offer made after that time is too late (*Pearson v. Gt. N. Ry. Co.*, L. R. 7 Q. B. 785; *R. v. Smith*, 12 Q. B. D. 481). Offer of compensation.

Where compensation is assessed under section 68, at the instance of claimants, an offer by the promoters made or increased at any time before the ten days' notice of trial by jury under section 46 is a valid offer, but no offer can be made subsequently

8 Vict. c. 18, ss. 52—54. (*Hayward v. Metropolitan Ry. Co.*, 12 W. R. 577; 4 B. & S. 787; *Metropolitan Ry. Co. v. Turnham*, 11 W. R. 695; 14 C. B. N. S. 212).

Where a claimant proceeds under section 68, and is found not entitled to the damages assessed, he cannot get his costs under this section, though no previous offer has been made (*Todd v. Metropolitan District Ry. Co.*, 19 W. R. 720; 24 L. T. 435).

Costs. In an action for the amount of the compensation assessed, the plaintiff may also recover the costs to which he is entitled under this section (*S. E. Ry. Co. v. Richardson*, 21 L. J. C. P. 122; 15 C. B. 810).

But the payment of the costs will not be enforced by *mandamus* (see *R. v. London & Blackwall Ry. Co.*, 4 R. C. 119; 3 D. & L. 404).

Where the landowner recovers a sum less than or equal to the sum offered, the company is entitled only to one half the formal costs, and not to one half of the costs of witnesses and counsel (*Bray v. S. E. Ry. Co.*, 7 D. & S. 307).

Where an abortive inquiry is held before a jury, and afterwards upon the same warrant a second inquiry is held under which damages are awarded, the claimant is entitled to the costs of the abortive inquiry (*R. v. North London Ry. Co.*, 51 L. J. Q. B. 241).

For the mode of recovering costs, see notes to section 34, *ante*.

Particulars of the costs.

52. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in the summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

The court has no power to review the master's taxation under this section (*Owen v. London & N. W. Ry. Co.*, L. R. 3 Q. B. 54. See *Sandback Trustees v. N. Staffordshire Ry. Co.*, 3 Q. B. D. 1).

Payment of costs.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

For the mode of recovering costs, see notes to section 34, *ante*.

Special jury to be summoned at the request of either party.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that

purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

8 Vict. c. 18,
ss. 55—57.

Where an owner has given notice under section 68, and afterwards gives notice for a special jury under this section, the special jury must be summoned within 21 days after the first notice, as appointed by section 68, unless there is not a reasonable time between the second notice and the expiration of the 21 days (*Glyn v. Aberdare Ry. Co.*, 28 L. J. C. P. 271; 6 C. B. N. S. 359).

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Deficiency of
special jury-
men.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries before
same special
jury by consent.

57. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not
to attend
more than
once a year.

8 Vict. c. 18,
ss. 58—63.

Compensation
to absent
parties to be
determined
by a surveyor
appointed by
two justices.

58. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Where it is doubtful who is the owner of land, but none of the claimants are absent or prevented from treating, the case is not within this section (*Ex parte London & S. W. Ry. Co.*, 38 L. J. Ch. 527).

Two justices
to nominate
a surveyor.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to
be made by
the surveyor.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices or one of them, make and subscribe the declaration following at the foot of such nomination: (that is to say),

“I *A. B.* do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.
”

“Made and subscribed in the presence of
And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Valuation,
&c. to be
produced to
the owner of
the lands on
demand.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to
be borne by
promoters.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-
money and
compensation,

63. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases

aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

8 Vict. c. 18,
ss. 64—68.

how to be
estimated.

See the notes to section 49, *ante*.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

Where compensation of absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Question to be submitted to the arbitrators.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

If further sum awarded, promoters to pay or deposit same within fourteen days.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Costs of the arbitration.

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the

To be settled by arbitration or jury, at the option of the

8 Vict. c. 18,
s. 68.

party claim-
ing compen-
sation.

works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided; and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

It is proposed to consider in the first place in what cases this section applies, and secondly, to discuss the nature of the damage in respect of which compensation is recoverable.

The section
gives com-
pensation.

This section does not in terms direct compensation to be given for lands injuriously affected, and it has been argued that its effect is only to provide the machinery for assessing such compensation where it is otherwise given. This argument has, however, not prevailed with the courts, and the contrary is now settled.

Thus, where the special Act incorporated the Lands Clauses Consolidation Act, 1845, it was held that compensation might be recovered under this section in a case not provided for by the special Act, though other cases which would have been within the section were provided for (*R. v. St. Luke's*, L. R. 6 Q. B. 572; *ib.* 7 Q. B. 148; approving on this point, *Ferrar v. London Commissioners of Sewers*, L. R. 4 Ex. 1).

Damage done
in exercise of
statutory
powers.

Where damage is done in the proper exercise of statutory powers the person injured has no legal or equitable remedy by action, but he must proceed under the compensation clauses of the Act to recover compensation (*Duke of Bedford v. Dawson*, 20 Eq. 353; *Vaughan v. Taff Vale Ry. Co.*, 5 H. & N. 679; 29 L. J. Ex. 247).

But where the act complained of is not done in accordance with the statutory powers, the right of action remains, and the compensation clauses have no application (*Caledonian Ry. Co. v. Colt*, 3 M. Q. 833; *Gas Light & Coke Co. v. Broadbent*, 7 H. L. 600; *Perks v. Wycombe Ry. Co.*, 10 W. R. 788; 3 Giff. 662; *Reg. v. Darlington Local Board*, 35 L. J. Q. B. 45. See *Blagrove v. Bristol Waterworks Co.*, 1 H. & N. 369; *Cator v. Lewisham Board of Works*, 34 L. J. Q. B. 74; 5 B. & S. 115).

Persons under disability may proceed under this section to recover compensation for permanent injury to land (*Stone v. Corporation of Yeovil*, 2 C. P. D. 99).

Injunction
not granted

The arbitration proceedings cannot be restrained though the company may dispute all liability. The question of liability should be raised in an action on the

award. (*London & Blackwall Ry. Co. v. Cross*, 31 Ch. D. 354. See *Brierley Local Board v. Pearsall*, 9 App. C. 595).

This section applies where the company has entered under section 85, and the owner should initiate proceedings for compensation (*Doe d. Armistead v. N. Staffordshire Ry. Co.*, 20 L. J. Q. B. 249; 16 Q. B. 528; *Adams v. London & Blackwall Ry. Co.*, 19 L. J. Ch. 557; 2 M'N. & G. 118).

To entitle a person to proceed under this section, his lands must have been actually taken or actually injuriously affected. Thus, the mere service of a notice to treat does not entitle a landowner whose lands have neither been actually taken nor injuriously affected to proceed under this section (*Burkinshaw v. Birmingham & Oxford Junction Ry. Co.*, 20 L. J. Ex. 246; 6 R. C. 609).

Where the owner of a leasehold interest received notice to treat, and the company subsequently arranged with the tenant in possession and received the key from him, it was held that there was evidence that the company had taken the premises so as to entitle the owner to bring an action for the compensation claimed (*Barker v. Metr. Ry. Co.*, 17 C. B. N. S. 785. See *Standish v. Mayor of Liverpool*, 1 Drew. 1).

A lessee who has received notice to treat and has sent in a claim which the company disregard, is entitled to maintain an action under this section, though the company have taken possession by agreement with a sub-lessee (*Barker v. Metr. Ry. Co.*, 13 W. R. 82; 17 C. B. N. S. 785; *Eaton v. Midl. G. W. Ry. Co.*, 10 Ir. L. R. 310).

It has been held that the notice required to be given under this section of "the nature of the interest in such lands," must state the particulars of the claim in the manner required under sect. 21, and that there is no substantial difference between the two sections in this respect (*Healey v. Thames Valley Ry. Co.*, 13 W. R. 44; 10 Jur. N. S. 1182. See *ante*, section 21).

A notice given by a landowner under this section is not waived by a subsequent notice under section 54, requiring a special jury, and the company must issue their warrant within twenty-one days though by section 24 no time is limited (*Glyn v. Aberdare Ry. Co.*, 28 L. J. C. P. 271; 6 C. B. N. S. 359).

Where a public body were entitled to a month's notice of any action or proceeding against them, and it was provided that every such action and proceeding should be commenced within six months after the accrual of the cause of action or ground of claim or demand, it was held that these provisions did not apply to a claim for compensation under the Lands Clauses Consolidation Act, 1845 (*Delany v. Metropolitan Board of Works*, L. R. 2 C. P. 532; 3 ib. 111).

A tenant from year to year, none of whose lands are taken, may proceed under this section (*R. v. Sheriff of Middlesex*, 10 W. R. 717; 8 Jur. N. S. 617; 31 L. J. Q. B. 261).

But a tenant from year to year who is required to give up possession of the whole or any part of his lands must proceed under section 121 for compensation for injuriously affecting his lands (*R. v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 4 E. & B. 88; 9 W. R. 591; *Knapp v. L. C. & D. Ry. Co.*, 11 W. R. 890. See notes to section 121, *post*).

Section 38, requiring the company to give the owner notice of their intention to summon a jury, does not apply to cases under this section where it is the owner who demands the jury (*Railstone v. York, Berwick & Newcastle Ry. Co.*, 15 Q. B. 404; *Hayward v. Metropolitan Ry. Co.*, 10 Jur. N. S. 418. See *ante*, section 38).

On the other hand, section 51 is incorporated with this section, and applies to cases where the landowner originates proceedings in respect of lands injuriously affected (*Richardson v. S. E. Ry. Co.*, 11 C. B. 154; 15 C. B. 810; *Hayward v. Metropolitan Ry. Co.*, 10 Jur. N. S. 418; 33 L. J. Q. B. 73. See *ante*, section 51).

Where the company make default in summoning a jury, and an action is brought for the compensation claimed, the company cannot plead that the claim is fraudulent (*Hooper v. Bristol Port R. & Pier Co.*, 35 L. J. C. P. 299).

If an inquisition is quashed the original warrant remains in force and should be proceeded upon. In such a case there is no default by the company (*Horrocks v. Metropolitan Ry. Co.*, 19 C. B. N. S. 139. See *Tanner v. Swindon, &c., Ry. Co.*, 45 L. T. 209).

In cases of injuriously affecting the company may proceed with their works before the compensation is ascertained, and need not make a deposit or enter into a bond under section 84 (*Hutton v. L. & S. W. Ry. Co.*, 7 Hare, 259; *Macey v. Metropolitan Board of Works*, 33 L. J. Ch. 377; *Temple Pier Co. v. Metropolitan Board of Works*, 13 W. R. 535; 34 L. J. Ch. 262; 11 Jur. N. S. 337).

Compensation under this section cannot be recovered for damage arising from the working of the railway after the execution of the works is complete where no land of the person injured is taken, or where, though some of his land is taken, the

§ Vist. c. 18, s. 68.

where claim unfounded.

The section applies to entry under sect. 85.

When the section applies.

Actual taking.

Notice of interest.

Notice of action.

Yearly tenant.

Damage from working of the railway.

8 Vict. c. 18,
s. 68.

"Injuri-
ously
affecting."

Distinction
between
compensation
where land
taken and
where not.

Damage must
be actionable.

Compensa-
tion.

Damage to
must be an
interest in
land.

Interesse
termini.

damage is caused by the working of the railway over adjacent lands taken from a third person (*Hammermith Ry. Co. v. Brand*, L. R. 4 H. L. 171; *City of Glasgow Union Ry. Co. v. Hunter*, L. R. 2 H. L. Sc. 78; *Hopkins v. Gt. N. Ry. Co.*, 2 Q. B. D. 224; *Caledonian Ry. Co. v. Walker's Trustees*, 7 App. O. 259).

It is not necessary, to entitle a person to compensation for injuriously affecting his land, that any part of his land should have been actually taken (*R. v. Eastern Counties Ry. Co.*, 2 Q. B. 347; *Glover v. N. Staffordshire Ry. Co.*, 16 Q. B. 912; *Hammermith Ry. Co. v. Brand*, L. R. 4 H. L. 171, p. 217; *Metropolitan Board of Works v. Macarthy*, L. R. 7 H. L. 243).

But the position of an owner, no part of whose land is taken, is to a certain extent different as regards compensation from that of an owner, some of whose lands have been taken. Thus, though it is clear that where no land is taken compensation cannot be given for loss of amenity merely as such, or for vibration and noise caused by the working of the completed line, on the other hand, where part of a property has been taken, loss of amenity by proximity to the railway, noise, dust, &c., may properly be taken into consideration as an element in assessing the compensation to be paid for depreciation in value of the property retained by the owner (*Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 419; *Ford v. Metropolitan Ry. Co.*, 17 Q. B. D. 12. See *ante*, section 49).

It is now settled that compensation under this section can only be recovered in respect of damage which would have been actionable but for the special Act (*Metr. Board of Works v. Macarthy*, L. R. 7 H. L. 243; *Rhodes v. Airedale Commissioners*, 1 C. P. D. 402; *Caledonian Ry. Co. v. Walker's Trustees*, 7 App. O. 259).

And the same rule has been followed in the construction of analogous Acts (*New River Co. v. Johnson*, 2 E. & E. 436; 29 L. J. M. C. 93; *The Waterworks Clauses Act*, 10 & 11 Vict. c. 17; *Hall v. Mayor of Bristol*, L. R. 2 C. P. 322; *The Public Health Act*, 1848, 11 & 12 Vict. c. 63).

It does not follow that compensation can be recovered in every case where an action would have lain but for the special Act, since compensation can be recovered only for damage to land or an interest in land (*Metr. Board of Works v. Macarthy*, L. R. 7 H. L. 243; *Caledonian Ry. Co. v. Walker's Trustees*, 7 App. O. 259).

Thus where a man suffers special damage by interference with a public right, but such damage is personal and does not affect his property, he cannot recover compensation (*Reg. v. Metropolitan Board of Works*, L. R. 4 Q. B. 358; but it is doubtful whether there was any actionable damage in that case).

So a claim for the value of iron pipes which have been taken up by a railway company is not within this section, the claim being merely for the value of chattels and not in respect of any interest in land (*New River Co. v. Midl. Ry. Co.*, 36 L. T. 539).

So it would seem that, where beer in vaults adjoining a railway is turned sour by the vibration caused by the railway, the owner of the beer, if a different person from the owner of the vaults, could have no right to compensation (see *Hammermith Ry. Co. v. Brand*, L. R. 4 H. L. 171, p. 197, per Blackburn, J.).

Where the house of a claimant was taken, it was held that under sections 6 and 16 of the Railways Clauses Act, the compensation awarded might include a sum for injury to the goods of the claimant in the house (*Knoek v. Metropolitan Ry. Co.*, L. R. 4 C. P. 131; 38 L. J. C. P. 78). This decision would not now be followed.

As to the right to compensation of a lessee who being injuriously affected determines his lease and takes other business premises, see *R. v. Poulter*, 56 L. J. Q. B. 581.

An *interesse termini* would no doubt be a sufficient interest to found a claim for compensation (*Gillard v. Cheshire Lines Committee*, 29 W. R. 943).

It will be seen from what has been said above that in order to lay down fully all the cases in which a landowner is entitled to compensation, it would be necessary to enumerate all the rights capable of existing in land, and the limits within which they may be exercised without interfering with the rights of others.

It is proposed here to limit the subject to the points which have actually arisen in compensation cases. It may be convenient to divide the subject into the following heads:—

1. Interference with rights which belong to the owner of land as such, or natural rights as distinguished from rights appurtenant to land, such as easements, &c.
2. Interference with rights of property exercisable over land, but not involving the ownership of land, or, in other words, incorporeal rights, such as franchises.
3. Interference with easements.
4. Interference with rights common to the claimant and all the world.

I. Access to
highway.

The owner of land fronting upon a highway, whether it is a landway or a waterway, and whether tidal or not, has a right of access to the highway, and is entitled

to compensation if his access is cut off (*Lyon v. Fishmongers' Co.*, 1 App. C. 662; *Chamberlain v. West End of London & Crystal Palace Ry. Co.*, 31 L. J. Q. B. 201; 32 *ib.* 173; 2 B. & S. 605, 617. See L. R. 2 H. L. 191. See *Reg. v. Wallasey Local Board of Health*, L. R. 4 Q. B. 351).

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s. 68.

So a person whose land abuts on the foreshore is entitled to compensation if his access to the sea is cut off (*R. v. Rynd*, 16 Ir. C. L. 29).

Access to sea.

And in the same way the right to compensation arises if by lowering or raising the highway the access is impeded, or additional fences or earthworks become necessary (*Reg. v. St. Luke's*, L. R. 7 Q. B. 148; *Moore v. Gt. S. & W. Ry. Co.*, 10 Ir. C. L. 46. See *Twohey v. G. S. & W. Ry. Co.*, 10 Ir. C. L. 98; *Reg. v. Eastern Counties Ry. Co.*, 2 R. C. 736; 2 Q. B. 347).

Lowering or raising highway.

The owner of land is entitled to put it to what use he pleases; no right to compensation therefore arises if a railway company, having purchased land, pulls down the houses upon it, and thereby destroys the custom of a neighbouring shop (*R. v. London Dock Co.*, 5 A. & E. 163; *R. v. Vaughan*, L. R. 4 Q. B. 190).

Loss of custom by destruction of a neighbourhood.

So the owner of a house may pull it down and rebuild it if he is careful to do no injury to the adjoining house, and the adjoining owner has no claim to compensation for noise, discomfort, loss of trade, &c. (*R. v. Hungerford Market Co.*, 1 A. & E. 668, 676).

A landowner being entitled to remove temporary shoals in a stream running through his land, there is no right to compensation if, by reason of such removal, neighbouring lands are flooded (*Rhodes v. Airedale Drainage Commrs.*, 1 C. P. D. 380, 402).

A landowner has no right to underground water flowing in no definite channel, and therefore no right to compensation for its subtraction (*New River Co. v. Johnson*, 29 L. J. M. C. 93; 2 E. & E. 435).

Subtraction of subterranean water.

A landowner has no right to an unencumbered prospect from his land (see *Aldred's Case*, 8 Rep. 58; *A.-G. v. Douglas*, 2 Ves. Sen. 453; *Knowles v. Richardson*, 1 Mod. 55).

Loss of view.

Nor has he any right of action, because buildings on neighbouring land overlook his land, and thereby interfere with its privacy. No right to compensation therefore arises in respect of such matters (*Re Penny*, 7 E. & B. 680).

Loss of privacy.

In the same way a person has no right of action because passers by are obstructed in the free view of his house or shop (*Butt v. Imperial Gas Co.*, 2 Ch. 158. See *Herring v. Metr. Board of Works*, 34 L. J. M. C. 224).

There being no common law right as distinguished from acquired right or easement belonging to the owner of a building to have the access of light to his building unobstructed, it would seem that no compensation could be claimed for an obstruction to light unless the owner of the building has acquired an easement of light. (In *Eagle v. Charing Cross Ry. Co.*, L. R. 2 C. P. 638, an easement of light appears to have been acquired).

Obstruction of light.

It has been held that a board empowered by statute to construct a sewer does not thereby acquire the right to lateral support, and cannot recover compensation if before the expiration of twenty years a company withdraws the lateral support and causes the sewer to burst (*Metr. Board of Works v. Metr. Ry. Co.*, L. R. 3 C. P. 612; 4 *ib.* 192. See *Roderick v. Aston Local Board*, 5 Ch. D. 328, p. 332; *In re Corp. of Dudley*, 8 Q. B. D. 86).

Lateral support.

It is clear that actionable injury to an incorporeal hereditament, such as a franchise, is the subject-matter of compensation. Thus, the obstruction of access to a ferry appurtenant to the claimant's house is matter for compensation (*R. v. G. N. Ry. Co.*, 14 Q. B. 25).

II. Injury to franchise.

A ferry is the exclusive right of taking passengers across a stream by means of boats.

Ferry.

It is no infringement of a ferry to provide fresh means of passage for a new kind of traffic. Thus a railway bridge, though in the line of a ferry, inasmuch as it does not connect the highways connected by the ferry, but provides means of transit for the traffic brought along the railway, is no infringement of the ferry. And if the railway bridge is allowed to be used by foot passengers free of toll to enable them to get to and from the station of the company, the case is within the same principle (*Hopkins v. G. N. Ry. Co.*, 2 Q. B. D. 224, overruling *Rex v. Cambrian Ry. Co.*, L. R. 6 Q. B. 422).

Whether a person who is the grantee of the right of shooting over lands is entitled to compensation if a portion of the land is taken by a railway company, appears not free from doubt. (In *Bird v. Gt. E. Ry. Co.*, 34 L. J. C. P. 366; 19 C. B. N. S. 268, it was held that the claim to compensation could not be maintained, chiefly on the ground that the right had not been granted by deed—a ground wholly untenable.)

Right of shooting.

The reason given by Willes, J., is that a person who has granted the right of

8 Vict. c. 18,
s. 68.

shooting may, nevertheless, use his property in a reasonable way; he may, for instance, make a road through it, and a railroad can do no more injury than an ordinary road. No doubt if no injury is done no compensation could be recoverable, but it would seem that if injury were done the right to compensation would arise (see *Pattison v. Gilford*, 18 Eq. 259).

III. Injury to
easements.

It is clear that any interference with an easement appurtenant to land entitles the owner to compensation.

This has been decided with reference to a private right of way, and to an easement of light (*Glover v. N. Staffordshire Ry. Co.*, 16 Q. B. 912; *Eagle v. Charing Cross Ry. Co.*, L. R. 2 C. P. 638; *Clark v. London School Board*, 9 Ch. 120; *Ford v. Metropolitan Ry. Co.*, 17 Q. B. D. 12; *R. v. Poulter*, 56 L. J. Q. B. 581).

Where land was conveyed to a purchaser, and described as bounded by streets not then made, the soil of the streets being the property of the vendor, the purchaser was held entitled to recover compensation from a railway company which had altered the level of the streets and cut off the access to the land (*Furness Ry. Co v. Cumberland Building Socy.*, 52 L. T. 144).

IV. Public
rights.

Where the right, in respect of which the owner claims compensation, is a public right common to himself and all the world, the following rule may be laid down to determine the right to compensation. Where the right interfered with gives an additional market value to the property apart from the uses to which any particular owner may put the property, there is a title to compensation if by reason of such interference the property as a property is lessened in value (*Metr. Board of Works v. Macarthy*, L. R. 7 H. L. 243; *Wadham v. N. E. Ry. Co.*, 14 Q. B. D. 747; 16 *ib.* 257).

Access to
road.

Thus, for instance, if the access to a house is cut off by the blocking up of a road near the house, this is a clear injury to the house as a property (*Wood v. Stourbridge Ry. Co.*, 16 C. B. N. S. 222; *Caledonian Ry. Co. v. Walker's Trustees*, 7 App. C. 259. See *Cook v. Mayor of Bath*, 6 Eq. 177).

Narrowing of
a road.

So where a house fronting on a highway is depreciated in value by the narrowing of the road, a right to compensation arises (*Beckett v. Midl. Ry. Co.*, L. R. 3 C. P. 82; *Metr. Board of Works v. Macarthy*, L. R. 7 H. L. 243; *Wood v. Stourbridge Ry. Co.*, 16 C. B. N. S. 222. See *Burgess v. Northwich Local Board*, 6 Q. B. D. 264).

Reasonable
access to
sewer.

A public body in whom a sewer is vested, and who are bound to repair it, are entitled if no right of access is expressly given to such access as is reasonably sufficient. They are not entitled to compensation because a railway company has made the access more difficult than before (*Mayor of Birkenhead v. L. & N. W. Ry. Co.*, 16 Q. B. D. 572).

Injury to
business.

If the injury is not to the property as such, but merely to the property as used for a particular purpose, such as a business, or, in other words, to the business carried on upon the property, no compensation can be recovered (*Rex v. London Dock Co.*, 5 A. & E. 163; *Rickett v. Metr. Ry. Co.*, L. R. 2 H. L. 176; *Bigg v. Corporation of London*, 15 Eq. 376; *Herring v. Metr. Board of Works*, 34 L. J. M. C. 224; 19 C. B. N. S. 510; *Wadham v. N. E. Ry. Co.*, 14 Q. B. D. 747; 16 *ib.* 257. *Senior v. Metr. Ry. Co.*, 32 L. J. Ex. 225; 2 H. & C. 258, may be considered overruled).

It would seem that an action might be maintained in such a case if the works causing the injury had not been executed under statutory powers).

Annoyance
from level
crossing.

Again a person who, by reason of the proximity of his property to a highway which is interfered with, is more frequently inconvenienced than other persons, as for instance in the case of a level crossing near a house, has no right to compensation if the property itself is not depreciated in value (*Caledonian Ry. Co. v. Ogilvy*, 2 Macq. 229; *Wood v. Stourbridge Ry. Co.*, 16 C. B. N. S. 222. See L. R. 7 H. L. 257; 7 App. C. 277).

Loss of right
to draw water
from river.

So the loss of a public right, such as that of taking water from a tidal river, which a person has made use of for the purposes of his business, will not entitle him to compensation, the value of the property where the business is carried on not being affected (*R. v. Metr. Board of Works*, L. R. 4 Q. B. 358; and compare *Metr. Board of Works v. Macarthy*, L. R. 7 H. L. 243; and see *R. v. Bristol Dock Co.*, 12 East, 429).

Temporary
obstruction of
highway.

A temporary obstruction of a highway for the purpose of a public work does not entitle the owner of property on the highway to compensation (*Herring v. Metr. Board of Works*, 34 L. J. M. C. 224).

Remote
damage.

Where a Board grubbed up trial plants of a seedsman and intermixed them so that the seedsman could not distinguish the parcels of seeds from which the plants were sown, and was unable to warrant the quality of the seeds, the depreciation in the value of the seeds by the inability to warrant was held too remote a damage to be compensated (*Re Clarke & Wandsworth Board of Works*, 17 L. T. N. S. 549).

Where owners of lands forming part of a building estate were entitled to rights

over the roads laid down on the plans, "so far as the same might be opened and not altered," it was held that this did not give the owners a right over roads not opened in respect of which they could claim compensation (*Fleming v. Newport Ry. Co.*, 7 App. C. 265).

8 Vict. c. 18,
s. 69.

Upon the question whether where a company takes part of an estate which is subject to restrictive covenants as to the mode of user of the several plots, the owner of a plot can claim compensation for breach of the covenants as to the plots taken, there is no authority, see *Baily v. De Crespigny*, L. R. 4 Q. B. 180.

It may be useful to refer to one or two old cases arising on private Acts earlier than the Lands Clauses Consolidation Act, 1845.

Cases on
private Acts.

A titheowner has been held not entitled to compensation because titheable land was converted to a purpose which rendered it incapable of producing tithe (*R. v. Commrs. of Nene Outfall*, 9 B. & C. 875).

Upon the construction of an Act providing compensation for loss of tithes, see *London & Blackwall Ry. Co. v. Lettis*, 3 H. L. 470.

In *R. v. Commrs. of Thames & Isis Navigation*, 5 A. & E. 804, under peculiar provisions of a special Act, compensation was given to the owner of a towing path who let out horses to be used there, the towing path having become useless owing to a new channel being cut.

In *R. v. Nott. Old Waterworks*, 6 A. & E. 355, compensation was given for injury to a mill by raising the water in a stream.

Where an injury has been done to the property of a landowner, it is no answer to a claim for compensation that the value of the property has not been diminished owing to a general rise in the value of property by reason of the company's works (*Senior v. Metr. Ry. Co.*, 32 L. J. Ex. 225; *Eagle v. Charing Cross Ry. Co.*, L. R. 2 C. P. 638).

Compensation may be assessed as well for damage done as for damage which the company give notice that they intend to do (*Stons v. Corporation of Yeovil*, 1 C. P. D. 691, p. 703; 2 C. P. D. 99).

Intended
damage.

Where the consent of the Thames Conservators was required before the company could proceed with their works, it was held that such consent did not prevent the Conservators in their capacity of landowners from recovering compensation for lands taken (*Thames Conservators v. Victoria Station & Pimlico Ry. Co.*, L. R. 4 C. P. 59).

Consent to
works.

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Application of
compensation.

69. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation (a), tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank (b), in the name and with the privity of the accountant-general of the Court of Chancery in England if the same relate to lands in England or Wales, or the accountant-general of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such accountant-general, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited

Purchase-money payable to parties under disability amounting to 200*l.* to be deposited in the bank.

8 Vict. c. 18, until the same be applied to some one or more of the following purposes; (that is to say)

Application
of moneys
deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance (c) affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands (d) to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings (e) taken under the authority of this or the special Act, or injured (f) by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled (g) to such money.

Settled Land
Act, s. 32.

This clause must now be read as modified by the Settled Land Act, 1882, section 32, which provides as follows:

Where, under an Act incorporating or applying wholly or in part the Lands Clauses Consolidation Acts, 1845, 1860 and 1869, or under the Settled Estates Act, 1877, or under any other Act public, local, personal, or private, money, is at the commencement of this Act in court, or is afterwards paid into court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then in addition to any mode of dealing therewith authorized by the Act under which the money is in court, that money may be invested or applied as capital money arising under this Act on the like terms, if any, respecting costs, and other things as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in court.

As to which procedure is to prevail under this section, see *In re Arabin's Trusts*, W. N. 1885, 90.

Charity land.

Under this section it has been held that the purchase-money of land belonging to a charity is money "liable to be laid out in the purchase of land to be made subject to a settlement," and may therefore be applied as capital money under the Settled Land Act (*In re Byron's Charity*, 23 Ch. D. 171; *In re Bethlehem & Bridewell Hospitals*, 30 Ch. D. 541).

(a) It appears to have been considered in Scotland that a railway company is not a "corporation" within the meaning of this section (*Caledonian Ry. Co. v. City of Glasgow Union Ry. Co.*, 17 July, 1869, 7 Maop. 1072; 41 Jur. 605).

Action for
mandamus.

(b) An action for a *mandamus* under section 68 of the Common Law Procedure Act, 1854, will lie to compel the company to pay the amount assessed into the bank (*Barnett v. Gt. E. Ry. Co.*, 18 L. T. N. S. 408).

Where the company paid the money under pressure to the vendors, who were a corporation, the latter were ordered to pay the money into court on motion by the company in a suit brought against the corporation (*London & N. W. Ry. Co. v. Corporation of Lancaster*, 15 Beav. 22).

Where the purchase-money had been paid to a tenant-in-tail, instead of being paid into court, the court ordered the fund to be re-invested upon the petition of the tenant-in-tail, without requiring it to be first paid into court (*In re L. B. & S. C. Ry. Co., Ex parte Earl of Abergavenny*, 4 W. R. 315).

Property of
lunatic.

Where the money is the absolute property of a lunatic, upon a petition in lunacy and in the Chancery Division, the money may be directly carried over to the credit of the lunacy, and invested to the joint account of the lunatic and the company, without payment into court under this section (*In re Milnes*, 1 Ch. D. 28).

And in a case where an investment in five per cent. guaranteed railway stock was allowed for the benefit of the lunatic, the name of the company was omitted from the account, so as to free them from all further liability (*In re Buckingham*, 2 Ch. D. 690).

Under a contract with a person absolutely entitled, who dies before payment of the purchase-money, so that the purchase-money is payable to his executors, the company is not entitled to pay the money into court, the executors referred to in the section being executors having a partial interest, with whom a contract has been entered into (*Newton v. Metropolitan Ry. Co.*, 8 Jur. N. S. 738).

8 Vict. c. 18,
s. 69.

Money payable to executors.

Payment into court under this section of the purchase-money of lands belonging to an infant does not make the infant a ward of court (*Re Wills, Somerset & Weymouth Ry. Co.*, *Ex parte Breuer*, 2 Dr. & S. 552).

The money is paid in upon a direction to be obtained upon a written request (see Forms to Supreme Court Funds Rules, Form 9).

How money paid in.

For the proper mode of procedure when the Paymaster-General's office is closed, see section 88.

By the "Supreme Court Funds Rules, 1886," rule 39, money paid into court pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of lands in England and Wales, "shall be placed in the books at the Pay Office, to the credit of *ex parte* the promoters of the undertaking in the matter of the special Act (citing it), as directed by the said Lands Clauses Consolidation Act, 1845, and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, as stated in the request for the direction for the lodgment."

Heading of the account.

Purchase-money paid into court under this section being directed to be invested in land, remains realty for purposes of descent until some person absolutely entitled elects to take it as personalty (*Kelland v. Fulford*, 6 Ch. D. 491).

Conversion.

Decisions to the same effect have been given on special Acts (*In re Taylor's Settlement*, 9 Hare, 596 (The London Bridge Act, 4 Geo. IV. c. 50); *In re Stewart, Ex parte Cramers*, 1 Sm. & G. 32; *Re Harrop's Estate*, 3 Drew. 726 (Manchester Improvement Act); *Ex parte Hardy*, 30 Beav. 206 (City of London Improvement Act)).

Arrears and accumulations of income of the fund are personalty (*Dixie v. Wright*, 32 Beav. 662).

Where lands devised with an option to purchase at a fixed sum are taken by a company, the option is transferred to the purchase-money (*In re Cant's Estate*, 4 De G. & J. 503).

Option to purchase.

Where there are other trust moneys to be invested as well as the fund in court, both funds may be dealt with together (*Ex parte Newton*, 4 Y. & C. Ex. 518; *In re Southampton & Dorchester Ry. Co.*, *Ex parte King's College, Cambridge*, 5 De G. & S. 621).

The assent of the Charity Commissioners to the investment or disposal of a fund in court, which has been paid in, in respect of land belonging to a charity, is not necessary either under the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 37, s. 17), or the Charitable Trusts Act of 1855 (18 & 19 Vict. c. 124, s. 35) (*In re Cheshunt College*, 3 W. R. 638; 1 Jur. N. S. 995; *Re Lister's Hospital*, 6 De G. M. & G. 184; *In re St. Giles's & St. George's, Bloomsbury*, 27 L. J. Ch. 560 (Trustee Act); *In re William of Kyngeston's Charity*, 30 W. R. 78; overruling *In re Markwell's Legacy*, 17 Beav. 618; *In re L. B. & S. C. Ry. Co.*, 18 Beav. 608, and *In re Sheates, Chelsea Waterworks Act*, 25 L. J. Ch. 49; 1 Jur. N. S. 1037).

Consent of Charity Commissioners.

(c) Under a special Act which contained provisions similar to this, a tenant for life who had redeemed the land-tax before the passing of the Act, was allowed to reimburse himself out of the proceeds of the land purchased (*Ex parte Lord Northwick*, 1 Y. & C. Ex. 166).

Land-tax.

The fund may be applied in the purchase of redeemed land-tax (*In re Lee & Hemingway*, 24 Ch. D. 669).

Under a section of a special Act, which was in the same terms as this section, it was decided that money paid for the compulsory purchase of certain lands of a corporation might be applied in paying off incumbrances on other lands belonging to the corporation, all lands of such a corporation being held upon the same or like uses, trusts, or purposes within the meaning of the section (*In re Eastern Counties Ry. Co.*, *Ex parte Corporation of Cambridge*, 5 R. Ca. 204; 6 Hare, 30; see *In re Derby Municipal Estates*, 3 Ch. D. 289).

Incumbrances on other lands.

Under the Settled Land Act capital money may be applied in paying off a mortgage affecting part of the land sold, or affecting any other part of the settled estate (*In re Chaytor's Settled Estate Act*, 25 Ch. D. 651).

Quit rent is an incumbrance within the Lands Clauses Act, and may be redeemed out of the fund (*In re Commrs. of Public Works, Ex parte Studdert*, 6 Ir. Ch. 53; *In re Commrs. of Church Temporalities in Ireland, Ex parte Lord Leonfield*, 1 R. 8 Eq. 559).

Quit rent.

But redemption of tithe rent-charge has been refused (*Re Dublin, Wicklow, &c. Ry. Co.*, 13 L. R. Ir. 479).

Tithe.

**8 Vict. c. 18,
s. 69.**

Old lease.

Statutory charges.

**Charges under
Drainage Act.**

**Expenses under In-
closure Act.**

**Bonds of
corporation.**

**Investment in
land.**

**Purchase of
mines.**

**Purchase of
equity of
redemption.**

**Freehold
ground rents.
Copyholds.**

**Investment in
leaseholds.**

An old lease upon lands which have improved in value may be treated as an incumbrance within section 69 (*In re Manchester, Sheffield & Lincolnshire Ry. Co.*, 21 Beav. 162; 25 L. J. Ch. 587; *Ex parte Bishop of London*, 2 De G. F. & J. 14; *Ex parte Corporation of London*, 5 Eq. 418; 37 L. J. Ch. 371; *In re Marquis Townshend's Estates*, W. N. 1882, 7).

Expenses incurred under statutory powers and expressly charged upon the land are, of course, incumbrances within the section (*Ex parte Queen's College*, 16 Beav. 159, n.).

So are expenses incurred under statutory powers in payment whereof the property may be sold, such as expenses under Inclosure Acts (*Ex parte Lockwood*, 16 Beav. 158).

Or expenses for repairs done under the Metropolitan Building Act, 18 & 19 Vict. c. 122, s. 72 *et seq.* (*Ex parte Davis*, 3 De G. & J. 144; 27 L. J. Ch. 712).

A charge, repayable by instalments, such as a loan under the Drainage Act (5 & 6 Vict. c. 89), or from the Governors of Queen Anne's Bounty, cannot be discharged out of the fund (*In re Commrs. of Public Works*, 6 Ir. Ch. 53; *In re Louth and East Coast Ry. Co.*, *Ex parte Rector of Grimoldby*, 2 Ch. D. 225; *Ex parte Rector of Kirkmeaton*, 20 Ch. D. 203).

The same principle has been applied under the Settled Land Act in the case of terminable charges created by a tenant for life before the Act (*In re Knatchbull's Settled Estate*, 29 Ch. D. 588).

Under the General Inclosure Act (8 & 9 Vict. c. 118, ss. 16 and 133), the person in possession or receipt of the rents and profits may charge the allotments with the expenses of the inclosures to the extent of 5*l.* per acre, by executing a mortgage. Under a settlement with powers to sell and apply the proceeds of sale in discharge of subsisting incumbrances, it was held that proceeds of sale might be applied in payment of inclosure expenses to the extent of 5*l.* per acre, though the tenant for life in possession had died without executing a mortgage in accordance with the Inclosure Act (*Vernon v. Earl of Mansvers*, 11 W. R. 133).

The words any "debt affecting the land," &c., are very wide, and have been held to authorize the payment of bonds given by a corporation payable out of the borough fund, which was largely composed of the rents of real estate (*In re Derby Municipal Estates*, 3 Ch. D. 289).

(d) Persons absolutely entitled may have the fund invested in land at the company's expense (*Re Jones's Trust Estate*, 18 W. R. 312; 39 L. J. Ch. 190; *In re Parker's Estate*, 13 Eq. 496; *Re Dodd's Estate*, 19 W. R. 740. See *In re De Beavoir*, 2 D. F. & J. 5; 29 L. J. Ch. 567, a case where the owner of the ultimate reversion in fee, which subsequently became vested in possession, had resettled the estate).

The land in which the money must be invested need not necessarily be within the jurisdiction of the court. In one case land was purchased in the Isle of Man (*In re Taylor's Estate*, 40 L. J. Ch. 454).

Enfranchisement of copyholds is a purchase of lands within the Lands Clauses Act (*In re Cheshunt College*, 3 W. R. 638; 1 Jur. N. S. 995; *Dixon v. Jackson*, 25 L. J. Ch. 588).

Under a power in a will to invest in lands or hereditaments adjoining to or convenient or desirable to be held with settled hereditaments, the purchase of mines under part of the settled estates was allowed (*Bellot v. Littler*, 22 W. R. 836).

The fund cannot under section 69 be invested in the purchase of an equity of redemption; it cannot therefore be applied in part payment of the purchase-money of an estate where the residue of the purchase-money is to be secured by a mortgage of the estate (*Ex parte Craven*, *In re Cheltenham & Gl. W. Ry. Co.*, 17 L. J. Ch. 215; *Ex parte Portadown, Dungannon & Omagh Junction Ry. Co.*, 1 R. 10 Eq. 368).

The fund may be applied in the purchase of freehold ground rents (*In re Peyton's Settlement*, 7 Eq. 463).

A fund representing freeholds may be invested in copyholds of inheritance, if it is for the benefit of the person interested (*In re Cann's Estate*, 19 L. J. Ch. 376; 16 Jur. 3. *In re Broune*, 6 R. C. 733; 16 Jur. 168, the amount allowed to be invested in copyholds represented the purchase-money of copyholds taken).

Where the purchase-money represents a settled freehold or copyhold estate, it cannot be invested in the purchase of long leaseholds (*Re Lancashire & Yorkshire Ry. Co.*, *Ex parte Macauley*, 23 L. J. Ch. 815; 2 W. R. 667).

But if the owners are absolutely entitled, such as trustees of a charity, an investment in leaseholds may be allowed (*Ex parte Trinity College, Cambridge*, 18 L. T. N. S. 849; *In re Rehoboth Chapel*, 19 Eq. 180).

As to the investment of money representing leaseholds, see *post*, section 74).

An arrangement under 1 & 2 Vict. c. 106, s. 21 *et seq.*, apportioning the purchase-money of glebe lands between two chapels-of-ease, is not within the Act, and the

company will not be directed to pay the costs of a petition (*Ex parte Vicar of Kidderminster*, 7 W. R. 482). 8 Viet. c. 18,
s. 69.

(e) By section 32 of the Settled Land Act (see *ante*), the fund in court may be applied in carrying out any of the improvements authorized by that Act (see section 25, and *In re Houghton*, 30 Ch. D. 102). Improvements under
Settled Land
Act.

In cases before the Settled Land Act, it was settled that money in court under the Lands Clauses Act could be laid out in building new buildings on parts of the settled lands, whether wholly new or to take the place of buildings which it is necessary to pull down, if it is for the benefit of the estate (*Ex parte Shaw*, 4 Y. & C. 506; *Re Wight's Devised Estates*, 6 W. R. 718; *Re Dummer's Will*, 2 D. J. & S. 515; *In re Lathropp's Charity*, 1 Eq. 467; *Drake v. Trefusis*, 10 Ch. 364; *In re Aldred's Estate*, 21 Ch. D. 228. See *In re Newman's Settled Estates*, 9 Ch. 681; and *In re Lord Hotham's Trusts*, 12 Eq. 76, a case under powers in a will). New build-
ings.

In *In re Johnson's Settlements*, 8 Eq. 338, the money was allowed to be applied in taking down buildings which had become useless, and in erecting others in their place.

And it would seem that building a new wing to an existing house would come within this principle (*In re Speer's Trusts*, 3 Ch. D. 262).

Upon this principle the residue of the fund in court was allowed to be applied to build a house for a chapel-keeper upon lands purchased with part of the fund (*In re Trustees of Lymington Baptist Chapel*, W. N. 1877, 226).

So money representing glebe could be applied to building a new rectory or farm buildings (*In re Incumbent of Whitfield*, 1 J. & H. 610; 9 W. R. 764; *Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549). Building
rectory.

It must be remembered that outlay in new buildings will only be authorized where it is shown to be for the benefit of the estate (*In re London & N. W. Ry. Act*, *Ex parte Corporation of Liverpool*, 1 Ch. 596).

And the remainderman's consent to the outlay was required (*In re Leigh's Estate*, 6 Ch. 887). Remainder-
man must
consent.

On the other hand, the money could not under the Lands Clauses Act be laid out in repairs or improvements which did not put new buildings into the ground, though the tenant for life might be unimpeachable for waste (*In re Leigh's Estate*, 6 Ch. 887; *Drake v. Trefusis*, 10 Ch. 364, where the money was not allowed to be applied with insurance money towards reinstating a house which had been burnt down, the insurance money being insufficient for that purpose. *In re Louth & E. Coast Ry. Co.*, *Ex parte Rector of Grimoldby*, 2 Ch. D. 225. See *Brunskill v. Caird*, 16 Eq. 493). Repairs or
improve-
ments.

Ex parte Rector of Hartington, 23 W. R. 484, where a sum of 80l. in court was allowed to be applied in finishing a new building upon which the rector had laid out private money of his own, is not easily reconcilable with *Drake v. Trefusis*. Possibly the court was influenced by the smallness of the sum to be laid out.

So the money could not be laid out in making roads (*In re Belfast Water Commrs.*, *In re R.*, 1 R. 5 Eq. 63; *In re Venour's Settled Estates*, 2 Ch. D. 522, where the law is clearly laid down).

The cases of *Re Buckinghamshire Ry. Co.*, 14 Jur. 1065, where alteration and improvement of almshouses by dividing rooms, and *Re Vicar of Queen Camel*, 11 W. R. 503, where expenditure in drainage works was allowed, must be considered of very doubtful authority, though no doubt cases may arise in which drainage works might be substantial additions to an estate, and not mere improvements (see *In re Leslie's Settlement Trusts*, 2 Ch. D. 185). New roads.

Drainage
works.

It has been said that under the Lands Clauses Act the money will be allowed to be laid out in repairs and improvements in the case of a corporation sole, such as a rector, and it was so allowed in *Ex parte Rector of Claypole*, 16 Eq. 574; *In re Louth & E. Coast Ry. Co.*, *Ex parte Rector of Grimoldby*, 2 Ch. D. 225; but the authority of these cases after the cases in the Court of Appeal, is very doubtful (see *In re Nether Stovey Vicarage*, 17 Eq. 156).

Where the money arises under the trusts of a will or settlement, or under a private Act, outlay in repairs and improvements may be more readily sanctioned (*Drake v. Trefusis*, 10 Ch. 364, per James, L. J.).

Thus, in *In re Leslie's Settlement Trusts*, 2 Ch. D. 185, outlay upon drainage upon which the tenants paid 5l. per cent. was allowed (see, too, *Donaldson v. D.*, 3 Ch. D. 743; and see *In re Croker's Estate*, W. N. 1877, 388, L. C. Act).

There appears to be some doubt whether a fund in court will be paid out to repay the cost of buildings after they have been erected in cases where the application would have succeeded if it had been made before the outlay was incurred. In *In re Leigh's Estate*, 6 Ch. 887, it was said, "We cannot sanction the fund being expended in repaying the petitioner what he has already expended. That is never done, unless the expenditure was properly a charge upon the inheritance, for which Repaying
expenses
incurred.

8 Vict. c. 18,
s. 69.

there is no pretence here." And in that case certain expenditure which had been incurred (the new hop-kiln and buildings, and the new cooling floor) was not allowed to be repaid out of the fund in court, though an application to apply the fund in the erection of those buildings before their erection would apparently have been granted. *Williams v. Aylesbury and Buckingham Ry. Co.*, 9 Ch. 684, appears to be a strong authority to the same effect. In that case, however, the rector asked to be repaid 700*l.* which he had spent in finishing a new rectory, which had been partially built out of other funds, an outlay which would probably not have been authorized even if the leave of the court had been asked beforehand (see *Drake v. Trefusis*, 10 Ch. 364).

And these cases were followed in *In re Stock's Devised Estates*, 15 L. J. N. of C. 1880, p. 3, where the petitioner sought to be repaid expenditure in building laid out before the company had taken any land.

On the other hand, there are several cases in which the fund has been applied towards the repayment of expenditure already incurred (*Ex parte Rector of Gamston*, 1 Ch. D. 477, and *Ex parte Rector of Holywell-cum-Needingworth*, 27 W. R. 707; *Re Partington's Trust*, 11 W. R. 160; 1 N. R. 177).

In *Ex parte Rector of Gamston* and *Ex parte Rector of Holywell*, *supra*, there appears to have been nothing to show that the expenditure had been incurred on the understanding that the fund in court would be applied to repay it. In *Re Partington's Trusts*, *supra*, there was such an understanding. It must, however, be admitted that these authorities are difficult to reconcile with those above cited in the Court of Appeal, and the practice on this point cannot be considered as settled.

Payment to trustees.

Where investment in building is allowed, the fund may be paid to trustees on their undertaking to apply the money in the manner directed (*In re Newman's Settled Estates*, 9 Ch. 681, *Settled Estates Act*).

Tenant for life.

But it will not be paid to a tenant for life till the buildings are certified to be completed (*Dummer's Will*, 2 D. J. & S. 515; *Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 649).

Nominee of bishop.

In the case of building on glebe, the fund will be paid to the secretary or nominee of the bishop under 1 & 2 Vict. c. 106 (*Re Incumbent of Whitfield*, 1 J. & H. 610; 9 W. R. 764; *Ex parte Rector of Claypole*, 16 Eq. 574).

Buildings injured by severance.

(f) These words cover a case where buildings have not been injured structurally, but where they have been severed so as to become useless (*In re Oxford, Worcester & Wolverhampton Ry. Co.*, *Ex parte Milward*, 29 L. J. Ch. 245; 27 Beav. 571).

Temporary buildings.

Where hospital buildings have been taken, the fund may be applied in providing temporary buildings for the accommodation of the patients (*In re St. Thomas's Hospital*, 11 W. R. 1018).

Payment to absolute owners.

(g) In cases not within the Lands Clauses Consolidation Act, where the special Act contained no provision for payment to persons absolutely entitled, the fund has nevertheless been paid out (*In re Retford*, 6 Jur. N. S. 796; *In re Musgrove*, *ib.* 797; *In re The Macclesfield Canal Act*, *In re Ackers*, 9 Jur. N. S. 224).

Dowress.

Where a specific part of the sum paid in has been assessed in respect of dower, the dowress is entitled to have this sum paid to her (*In re Hall's Estate*, 9 Eq. 179).

Payment to trustees under Settled Land Act.

By virtue of the Settled Land Act, s. 21, sub-s. 9, the fund may be paid to any person empowered to give an absolute discharge.

It may therefore be paid to trustees whether they have a power of sale or not (*Re Rutland's Settlement*, 49 L. T. 196; *In re Wright's Trusts*, 24 Ch. D. 662; *In re Harrop's Trusts*, 24 Ch. D. 717). And it would seem that trustees of a charity are entitled to receive payment (*In re Byron's Charity*, 23 Ch. D. 171).

Payment to trustees before Settled Land Act.

The cases before the Settled Land Act upon the question of payment out to trustees are therefore in great measure superseded. They may be shortly summarized as follows:—

I. Payment to charity trustees.

Upon the question whether the fund would be paid to trustees of a charity, the cases are conflicting. In *Ex parte Trustees of Tid St. Giles' Charity*, 17 W. R. 758; *Ex parte Horfield Trust*, W. N. 1881, 16; *In re Spurstowe's Charity*, 18 Eq. 279; and *In re Parson of St. Alphege*, W. N. 1886, 154, payment out was made, but in *Re Faversham Charities*, 10 W. R. 291; 5 L. T. N. S. 787, and *Ex parte Norfolk Clergy Governors*, W. N. 1882, 53, it was refused.

II. Trustees with power of sale.

The fund was allowed to be paid out to trustees of a will or settlement with a power of sale which had come into operation, whether the beneficiaries were under disability or not, and service on the beneficiaries was not necessary (*In re East*, 2 W. R. 111; *In re Ilman's Will*, 39 L. J. Ch. 760; 18 W. R. 962, where the power of sale given to the trustees is not stated; *In re Gooch's Estate*, 3 Ch. D. 742; *In re Hobson's Trusts*, 7 Ch. D. 708; *In re Thomas' Settlement*, W. N. 1882, 7; overruling *In re Reaston's Estate*, 13 Eq. 564. See *In re Manor of Imberhorne*, W. N. Feb. 20, 1876, 30, a case under the Enfranchisement Acts).

Where the power of sale had come into operation, it was immaterial that the land was taken before the power of sale arose (*In re East*, 2 W. R. 111). 8 Vict. c. 18, s. 69.

The fund was also allowed to be paid to trustees whose power of sale had not become exerciseable (*In re Vestry of St. Luke's, Middlesex*, W. N. 1880, 58; *In re Morgan's Settled Estates*, 9 Eq. 587; *In re Evans' Settlement*, 14 Ch. D. 511, overruling *In re Horwood's Estate*, 3 Giff. 218).

And it has also been paid to trustees having a power of sale with consent where the person whose consent was required concurred in the application (*In re Ward's Estates*, 28 Ch. D. 100). Power of sale with consent.

The company, however, had no right to compel payment to the trustees if they did not ask for it (*In re Sowry*, 8 Ch. 736).

The fund may be paid to three out of four trustees, the fourth being abroad (*Clark v. Fennick*, 21 W. R. 320).

But it will not be paid to a single trustee unless all parties interested are brought before the court. If this is not convenient, the application should ask for the appointment of a new trustee at the same time (*Re Roberts*, 9 W. R. 758; 7 Jur. N. S. 818; *In re Wright's Trusts*, 24 Ch. D. 662; *In re Harrop's Trusts*, 24 Ch. D. 717. See *Grant v. Grant*, 6 N. R. 347).

If the shares are small, for instance, only 120*l.*, they may be paid to a sole trustee (*Re Long's Estate*, 12 W. R. 460).

If there is no power of sale it was doubtful whether the money could be paid to the trustees. III. Trustees without power of sale.

In *Re Roberts*, 9 W. R. 758, payment out to a trustee was allowed upon a representation that the estate was substantially represented; but there may have been a power of sale in that case.

On the whole, the better opinion appears to be that the fund could not be paid to trustees without a power of sale. See cases already cited, *supra*.

Cases under the Settled Estates Act and the Partition Acts, in which proceeds of sale have been paid to trustees, would appear not to be authorities in point, as different considerations apply to those Acts (see *Re Morgan's Settled Estates*, 9 Eq. 587; *Aston v. Meredith*, 13 Eq. 492; *Re Helmsley*, 43 L. J. Ch. 72). Practice under Settled Estates Act.

A portion of the fund may be paid out to trustees having a power of advancement which they desire to exercise (*In re Curwen's Settlement*, W. N. 1880, 83).

In cases not within the Married Women's Property Act, 1882, where the fund represents land to which a married woman was absolutely entitled, it may be paid out to the husband on the married woman electing by examination in court to take the fund as personal estate (*In re Robin's Estate*, 27 W. R. 705 (L. C. Act); *In re Hayes*, 9 W. R. 769 (L. C. Act); *Re Tyler's Estate*, 8 W. R. 540 (600*l.* L. C. Act); *Standerling v. Hall*, 11 Ch. D. 652 (Partition Acts)). Fund of married woman.

If the fund is small it may be paid out to the married woman on her separate receipt, and her separate examination can be dispensed with (*Wallace v. Greenwood*, 16 Ch. D. 362, not following *In re Shaw*; *Topham v. Burgoyne*, 49 L. J. Ch. 213).

The old rule was that sums under 200*l.* or under 10*l.* a year, could be paid out to a married woman without her separate examination (see Seton, 688). When examination dispensed with.

The limit has, however, in some cases been raised to 500*l.* (*In re Morton's Estates*, W. N. 1874, 181, Malins, V.-C., 500*l.*; *Re Webb*, cit. Seton, 688, Hall, V.-C., 500*l.*; *Andrews v. Tyrrell*, 29 Sol. J. 622, Chitty, J., 500*l.*; *Frith v. Lewis*, W. N. 1881, 145, Fry, J., 264*l.*).

Where the land was settled on the wife for life, with remainder in fee to the survivor of husband and wife, the court considered a deed acknowledged necessary (*In re Belf's Settlement*, 25 W. R. 901, a case under the Settled Estates Act). It would seem that a deed acknowledged would not now be considered necessary in such a case.

The fund cannot, it seems, except in the case of small sums, be paid to the wife upon her separate receipt without her examination or deed acknowledged (*Gibbons v. Kibbey*, 10 W. R. 55).

Where husband and wife had mortgaged the wife's lands for 50*l.* without deed acknowledged, and the lands were taken, the court ordered payment to the mortgagee of the 50*l.* upon a petition by the husband and wife and the mortgagee without requiring a deed acknowledged or examination of the wife (*Pollock v. Birmingham, Wolverhampton & Stour Valley Ry. Co.*, *Re Clarke's Estate*, 13 W. R. 401. See *Knapping v. Tomlinson*, 18 W. R. 684). Whether small sum paid without separate examination.

If the land belonged to the married woman for her separate use, her separate examination would no doubt be dispensed with, if the fund is to be paid upon her separate receipt (*Anon.*, 3 Jur. N. S. 839, a case of a fund of personalty in court).

A tenant-in-tail must execute a disentailing deed before the money will be paid out (*In re Butler's Will*, 16 Eq. 479 (L. C. Act); *In re Broadwood Settled Estates*, 1 deed. Disentailing deed.

2 Vist. c. 18,
s. 70.

Ch. D. 438 (Settled Estates Act); *In re Reynolds*, 3 Ch. D. 61 (private Act); *In re Limerick & Inniskillen Ry. Co.*, *Ex parte Smyth*, 1 R. 10 Eq. 66, overruling *In re Holden*, 1 H. & M. 445 (L. C. Act); *Re Holden's Estate*, 10 Jur. N. S. 308 (L. C. Act); *Nolley v. Palmer*, 1 Eq. 241; *In re Row*, 17 Eq. 300 (L. C. Act); *In re Wood's Settled Estates*, 20 Eq. 372 (Settled Estates Act)).

Where there has been a conveyance to the company duly enrolled for the purpose of disentailing the lands conveyed, another disentailing deed as to the money in court would probably not be required (*Re Tyler's Estate*, 8 W. R. 540; *In re S. E. Ry. Co.*, 30 Beav. 215).

Perhaps a disentailing deed might be dispensed with where the fund is very small, as, for instance, under 200*l.* (see *Sovary v. S.*, 8 W. R. 339; *Re Tylden's Trust*, 11 W. R. 869; *Re Watson*, 10 Jur. N. S. 1011).

Evidence of
disentailing
deed.

The disentailing deed should either be set out in the petition or made an exhibit (*Re Field's Estate*, 8 L. T. N. S. 722).

Statutes of
Limitation.

A person having a possessory title merely at the time when the land is taken, but who would have acquired a good title under the Statutes of Limitation if the land had not been taken, is entitled to the fund (*Re Evans*, 42 L. J. Ch. 357; *Ex parte Winder*, 6 Ch. D. 696).

The court has power under this section to transfer the fund to the credit of a pending cause (*Melling v. Bird*, 22 L. J. Ch. 599; 17 Jur. 156).

Order for
application
and invest-
ment mean-
while.

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said accountant-general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Interim and
permanent
investment
on summons.

Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Act should now be made by summons (Order LXV. r. 2 (7); *Ex parte Mayor of London*, 25 Ch. D. 384).

An application for payment out of a fund to be laid out in new buildings is not within this rule, and should be by petition if the fund is over 1,000*l.* (*Ex parte Jesus College, Cambridge*, W. N. 1884, 37).

Payment out
of Court.

If the cash and the nominal value of the securities in court together do not exceed 1,000*l.* applications for payment out of court should be made by summons (Order LV. r. 2 (2); *Ex parte Maidstone & Ashford Ry. Co.*, 25 Ch. D. 168; *In re Callon's Will*, *ib.* 240; *In re Madgwick*, *ib.* 371; *Re Haworth*, W. N. 1885, 48).

Except in the cases mentioned in the next paragraph, the application should be by petition if the total cash and securities exceed 1,000*l.*, though the amount to be paid out is under 1,000*l.* (*May v. Dowse*, W. N. 1884, 122).

Payment out,
where there
has been an
order declar-
ing rights, or
where the
case is simple.
Fund to gene-
ral credit.
Discretion to
allow peti-
tion.

Applications for payment out of sums above 1,000*l.* should also be by summons if there has been a judgment or order declaring the right, or where the title depends only upon proof of the identity, or birth, or marriage, or death of any person (Order LV. r. 2 (1); *In re Brandram*, 25 Ch. D. 366; *In re Broadwood*, W. N. 1886, 103).

Where the fund stands merely to the credit of a general account the case is not within the last-mentioned rule, and a petition should be presented (*In re Evans*, W. N. 1886, 84. See, too, *In re Rhodes*, 31 Ch. D. 499).

The court has a discretion to allow the costs of a petition if owing to the difficulty of the case or for any other reason it considers a petition advisable (*In re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541; *Ex parte Finsbury Savings Bank*, W. N. 1886, 150).

Small surplus
invested in
chambers.

Where application for investment of a part only of a fund is made, an order may be made directing the investment of the residue, where it is of small amount, in purchases to be approved by the judge at chambers (*Re Dunraven Estates*, 5 L. T. N. S. 623; 10 W. R. 56; *Re Trustees of Jolliffe's Charity*, W. N. 1868, 56; *In re Lapworth Charity*, W. N. 1879, 37).

The court has, however, refused to add to the order any direction with regard to a

future investment in land in the event of the proposed investment not being approved (*Ex parte Pumfrey*, 4 R. C. 490).

8 Vict. c. 18,
s. 70.

The question of the service of petitions under the act will be found discussed under section 80.

Service.

After an order has been made for payment of dividends to a tenant for life, payment of the apportioned dividend due at the death of the tenant for life can be obtained at the pay office by his representatives on proof of the death (Supreme Court Funds Rules, 1886, r. 62. See *Chapman v. Chapman*, 17 Eq. 350).

Apportioned dividend.

There must be a fresh application for payment to the successor in title of the tenant for life (*In re Jolliffe's Estate*, 9 Eq. 668).

The tenant for life is entitled to apply for investment of the fund and payment of the dividends before the conveyance to the company is executed, if the company has taken possession (*Re Wrey*, 13 W. R. 543; 11 Jur. N. S. 206; *Re Hungerford*, 1 K. & J. 413).

Investment before conveyance.

This is the case, though there may be a dispute as to whether an annuitant having a charge on the land ought to concur in the conveyance (*Ex parte Cofield*, 11 Jur. 1071).

Where there were two annuities charged on the land, with power of distress, and the annuitants had not been parties to the valuation of the land, the fund was invested, and the dividends directed to be paid to the tenant for life on a petition by the tenant for life and the annuitants, the latter undertaking never to proceed against the land taken for their annuities (*Re Pedley's Estate*, 1 Jur. N. S. 654).

There appears to be no reason to suppose that an annuitant, having a charge upon land the whole of which is taken, would not be entitled to apply for payment of arrears and accruing instalments out of the funds.

Application by annuitant.

Thus, where the property taken was subject to an annuity, which together with all arrears would have had to be paid in full before the persons entitled subject to the annuity could have claimed anything, the annuitant was held entitled to have the annuity made up by periodical sales (*Ex parte Wilkinson*, 3 De G. & Sm. 633. *Ex parte Back*, 2 Y. & J. 386, is probably to be considered obsolete).

Where the money represents a burial ground, which had been closed by an Order in Council, the persons who would have been entitled to the burial fees are the persons entitled to the dividends under this section (*In re St. Pancras Burial Ground*, 3 Eq. 173; 36 L. J. Ch. 52; *Ex parte Rector of Liverpool*, 11 Eq. 15; 40 L. J. Ch. 66; *Ex parte Rector of St. Martin's*, 11 Eq. 23; 40 L. J. Ch. 69).

Burial ground.

A remainderman is not entitled to apply for the transfer of the fund to the credit of a cause, in which he is plaintiff and the tenant for life a defendant, as the effect of the transfer would be to deprive the tenant for life of his right to have the fund invested at the expense of the company (*Nash v. N.*, 37 L. J. Ch. 927; 16 W. R. 1105).

Remainderman should not apply.

The court cannot, it seems, upon an application to deal with the fund in court, whether paid in under sections 69 or 76, direct the company to pay interest, unless the objection to the jurisdiction is waived (*Ex parte Hardwicke*, 1 D. M. & G. 297; *In re Crystal Palace Ry. Co.*, *In re Divers*, 1 Jur. N. S. 995; *In re Marylebone Improvement Act*, *Ex parte Toppie*, 19 W. R. 1058).

Interest.

It is now settled that money in court under the Lands Clauses Act or any other Act, is "cash under the control of the court," and may be invested in any security in which cash under the control of the court may be invested (*Ex parte St. John Baptist College, Oxford*, 22 Ch. D. 93; *Jackson v. Tyas*, 50 L. J. Ch. 830, confirming *In re Birmingham Blue Coat School*, 1 Eq. 632, Private Act, Lord Romilly; *In re Wilkinson's Estate*, 9 Eq. 343, Special Act, V.-C. Malins; *In re Cook's Settled Estates*, 12 Eq. 12, Lord Romilly; *In re Thorold's Settled Estates*, 14 Eq. 31, V.-C. Malins; *In re Taddy's Settled Estates*, 16 Eq. 532, V.-C. Malins. The last three are cases under the Settled Estates Act, 1856. *In re Foy's Trusts*, 23 W. R. 744, V.-C. Hall, L. C. Act; *In re Fryer's Settlement*, 20 Eq. 468, V.-C. Hall, L. C. Act; *In re Southwold Ry. Co.'s Bill*, 1 Ch. D. 697, V.-C. Hall, Parl. Deposits Act, and overruling *Ex parte G. N. Ry. Co.*, 9 Eq. 274, Lord Romilly, Parl. Deposits Act; *In re Shaw's Settled Estates*, 14 Eq. 9, Lord Romilly; *In re Boyd's Settled Estates*, 21 W. R. 667, cited 20 Eq. 469, L. C. for M. R., Settled Estates Act, 1856; *Langmead v. Cockerton*, W. N. 1877, 43; 25 W. R. 315, Sir G. Jessel, M. R., Partition Act, 1868; *Ex parte Vicar of St. Mary, Wigton*, 18 Ch. D. 646; *Ex parte Rector of Kirkmeaton*, 20 Ch. D. 203. See, too, *In re Briscoe*, 4 N. R. 311).

Fund in court in cash under control of court.

For the investments in which cash under the control of the court may be invested, see Order XXII., rule 17.

Investment of cash under control of court.

The East India Stock mentioned in this rule includes East India Stock created since the date of the rule (*Ex parte St. John Baptist College, Oxford*, 22 Ch. D. 93).

By virtue of the Settled Land Act, section 32, the fund may be invested in the investments mentioned in section 21 (see *In re Hanbury's Trusts*, W. N. 1883, 116).

Effect of Settled Land Act.

8 Vict. c. 18,
s. 70.

If investment in a wider security is desired by a tenant for life, he must at his own expense serve the remainderman, or the trustees representing him (*In re Dowling's Trusts*, 45 L. J., Ch. 568; 24 W. R. 729.)

In one case investment in Metropolitan Board of Works Stock was allowed (*Re Redhead's Trusts*, 39 L. T. 60).

Fund of
lunatic.

Money paid in in respect of the lands of a lunatic becomes cash under the control of the court after it has been transferred to the account of the lunacy, and may then be invested in securities authorized for the investment of cash under the control of the court (*In re Biscoe*, 4 N. R. 311).

Interim
investment on
mortgage.

It is now settled that an interim investment in real security will be allowed (*In re William Smith's Estate*, 9 Eq. 178; *In re Blyth's Trusts*, 16 Eq. 468; *In re Sewart's Estate*, 18 Eq. 278. *Ex parte Franklyn*, 1 De G. & S. 528, is not to be followed).

It seems the particular security selected must be specified in the order (*In re Newport, Abergavenny & Hereford Ry. Co.*, 11 Jur. 160; *In re Taylor's Settled Estates*, 28 W. R. 594. *In re Manchester, Huddersfield & Great Grimsby Ry. Co.*, 4 R. C. 204, the order gave the parties leave to select any of the authorized investments).

Request to
invest,

Under the Chancery Funds Rules, 1874, a request for investment was necessary before an investment could be made under an order to invest, and a solicitor neglecting to make such request was liable in damages (*Batten v. Wedgwood Coal & Iron Co.*, 31 Ch. D. 346).

not now
required.

Under the Supreme Court Funds Rules, 1886, rules 25, 47, the schedules to the order are to be the paymaster's authority for giving effect to the several operations therein directed, and a request to invest is not required.

As to the liability of the paymaster for omitting to invest, see *In re Woodcock's Settled Estates*, 13 Eq. 183.

The official broker must be employed (*In re West Riding & Lanc. Rys. Bill*, W. N. 1876, 80).

Form of order
to pay divi-
dends:
to private
trustees;

In the case of private trustees, the usual form of order is to direct payment of the dividends to the trustees by name, or any one of them (*In re Clinton*, 8 W. R. 492; *Re Coulson's Settlement*, W. N. 1867, 233; *In re Foy's Trusts*, 23 W. R. 744; *In re Pryor's Settlement*, W. N. 1876, 141; 35 L. T. N. S. 202; Seton, 4th ed. 88).

As, however, it appears to be doubtful whether, if all the trustees die, and new trustees are appointed, the company would be ordered to pay the costs of a petition for payment to the new trustees, it would seem that the order should direct payment to the named trustees or other the trustees for the time being, or any one of them, to be verified by affidavit if necessary (*Re Gee*, 3 W. R. 119; 24 L. T. O. S. 152; *In re Pryor's Settlement*, W. N. 1876, 245; 35 L. T. N. S. 202; *In re Met. Ry. Co. & Maire*, W. N. 1876, 245).

to charity
trustees;

In the case of trustees of a charity, the order should direct payment to any two of the trustees for the time being (*Att.-Gen. v. Brickdale*, 8 B. 223; *Ex parte Shrewsbury Hospital*, 9 Hare, Appx. 45; *In re Collins' Charity*, 29 L. J. Ch. 168).

In such a case an order has been made directing payment to the present secretary of the trustees, and to his successors the secretaries for the time being to the trustees, there being no treasurer (*In re Codrington's Charity*, 18 Eq. 658).

to corporation
sole;

In the case of a corporation sole, the order should direct payment to the petitioner and his successor for the time being (*Ex parte Archb. of Canterbury*, 2 De G. & S. 365; *Att.-Gen. v. Brandreth*, 1 Y. & C. C. 200, p. 202; *Re Pearce*, 24 Beav. 491; *Ex parte Churchwardens of Bicester*, 5 R. C. 702; *Re Davenant*, 2 W. R. 344).

to corporation
aggregate;

In the case of a corporation aggregate, the dividends are generally directed to be paid to the corporation, and are received under a power of attorney executed by the corporation.

But they may be ordered to be paid to the treasurer of the corporation (4th ed. Seton, 89, 92).

Payment to the secretary of a railway company may be ordered, if the petition or summons asking such payment is stamped with the seal of the company, which need not be verified by affidavit (*Ex parte L. C. & D. Ry. Co.*, 8 W. R. 636; *Ex parte Maidstone & Ashford Ry. Co.*, 25 Ch. D. 168).

If the petition or summons is not sealed, an authority to the solicitor of the company to receive the money must be stamped as a power of attorney (*In re Dartmouth & Torbay Ry. Co.*, 9 W. R. 609).

In the case of a body like the Corporation of London, payment will be directed to the chamberlain or comptroller, both being well known offices, though the petition is not sealed (*Ex parte Mayor & Corporation of London*, W. N. 1878, 238).

to successive
life tenants.

In the case of a husband and wife, having successive life interests, orders have been made directing that upon proof of the death of the tenant for life in possession, the dividends shall be paid to the next tenant for life (*In re How's Trust*, 15 Jur. 266).

And the same order has been made where the successive tenants for life were

not husband and wife (*In re Brent's Trusts*, 8 W. R. 270; *In re Lowndes' Trust*, 20 L. J. Ch. 422). 8 Vict. c. 18, s. 70.

It is now the settled practice even upon petition by a tenant for life for interim investment and payment of dividends, to require an affidavit that no other person is entitled, see Order LII., rule 18 (*Ex parte Hollick*, 4 R. C. 498; 16 L. J. Ch. 71; *Re Milne's Estate*, 1 N. R. 516; *Ex parte St. Mary's College, Winchester*, 14 W. R. 788. *Re Baroness Braye*, 9 Hare, Appx. 7, is overruled).

The affidavit should, if possible, be made by the tenant for life, and not by his solicitor (*Re L. & N. W. Ry. Co.*, 1 W. R. 60).

But in the case of the illness or other incapacity of the tenant for life, the affidavit of the solicitor or of a trustee will be accepted (*In re Halsey's Estate*, W. N. 1870, 68; *Re Smith's Leaseholds*, 14 W. R. 949, affidavit by executors).

In the case of charity trustees an affidavit by the clerk of the trustees is sufficient (*Re Edward VI.'s Almshouses*, 16 W. R. 841).

Affidavits by one of several mortgagees and a surviving trustee, have been held sufficient on petitions for payment out of court (*In re Vale of Neath Ry. Act; Jersey v. J.*, W. N. 1866, 78; *In re Batty's Trusts*, W. N. 1877, 212).

In the case of a public body, such as a college, an affidavit of title is not necessary (*In re Magdalen Coll.*, W. N. 1880, 154).

In the case of a fund belonging to a married woman or widow, there must be an affidavit of no settlement; or if there is a settlement, an affidavit identifying it, and stating that it is the only settlement (*Elrington v. Elrington*, 4 Dr. 545). Affidavit of no settlement.

In the case of a married woman, the affidavit should be by husband and wife.

If there is a difficulty in procuring the affidavit of the husband, because he is abroad, or refuses to make an affidavit, or is separated from his wife, the wife's affidavit will be accepted (*Elliott v. Remington*, 9 Sim. 502; *Wilkinson v. Schneider*, 9 Eq. 423, 431; *Anon.*, 3 Jur. N. S. 839; *Ewart v. Chubb*, 20 Eq. 454).

If both husband and wife are abroad, the affidavit of their solicitor will suffice (*Woodward v. Pratt*, 16 Eq. 127).

In the case of very small sums, the affidavit may be dispensed with (*Veal v. Veal*, 4 Eq. 115).

Order LXI. of the Supreme Court Funds Rules, 1886, provides for payment of money or transfer of securities to a woman who has married since the date of the order for payment or transfer.

Marriage since order for payment.

Upon an application for investment in land, the court by one order approves the proposed purchase, and directs a reference as to title, and a conveyance and payment of the purchase-money if the title is approved (see Seton, 4th ed. 1428, 1429; *Ex parte Metherell*, 20 L. J. Ch. 629; see 16 Jur. 512, n.; *Re Hickin's Estate*, 1 W. R. 605).

Order on application to purchase land.

The old practice, according to which a fresh application to the court was necessary at each stage of the proceedings, is obsolete (*In re Caddick*, 22 L. J. Ch. 10; 9 Hare, Appx. 9. *Ex parte Duckle*, 16 Jur. 511; *Re Martin*, 17 Jur. 30; *Anon.*, 18 Jur. 742, are overruled).

Satisfactory evidence must be given to show that the purchase is a proper one.

An affidavit by a surveyor that the purchase is advantageous, is not sufficient. The affidavit should state facts, to enable the court to form its own opinion (*In re Caddick*, 9 Hare, App. 9; *Re Kinsey*, 1 N. R. 303).

The practice is to direct a general reference as to title, and not an inquiry whether a good title can be made subject to the conditions of sale, but liberty is given to apply to the judge in chambers for leave to waive any particular requisitions (*Ex parte Governors of Christ's Hosp.*, 2 H. & M. 166; *Meyrick v. Laws*, 34 B. 58).

Inquiry as to title.

A substantially safe holding title may be accepted if the purchase is in other respects beneficial (*Re Sheffield & Rotherham Ry. Co.*, 1 Sm. & G. App. 4).

In the case of very small sums, the reference as to title would probably be dispensed with, or if the usual order is made, liberty will be given to apply in chambers to dispense with the investigation of the title wholly or in part (*In re Blomfield*, 25 W. R. 37).

In *Ex parte Vicar of East Dereham*, 21 L. J. Ch. 677, a conveyance was directed, upon the opinion of the counsel for the petitioner that the title was a good one.

Execution of deeds must be proved by the affidavit of the attesting witness. If the attesting witness is not accessible evidence of the handwriting will be accepted (*In re Roay's Estate*, 1 Jur. N. S. 222; 3 W. R. 312; *In re Rice*, 32 Ch. D. 35. See *Re Mair's Estate*, 28 L. T. 760; 21 W. R. 749). Proof of deeds.

If a petitioner dies after the petition has been presented, it may be amended by substituting a new petitioner (*In re Wilkinson's Settled Estate*, 9 Eq. 71).

Where the petitioner dies after an order has been made, liberty will be given to successors in title of the petitioner to carry on the petition (*Ex parte Rector of Isa*,

8 Viet. c. 18, ss. 71—73. 21 L. J. Ch. 776; *In re Atkins' Estate*, 1 Ch. D. 82. See *Re Staggoll*, 15 W. R. 974).

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

71. If such purchase-money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

This section applies to cases where the fund has been reduced by investment to less than 200*l.* (*Re Kinsey*, 1 N. R. 303. See *Ex parte Rector of Loughton*, 5 R. C. 691).

Sums not exceeding 20*l.* to be paid to parties.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

The residue of the fund, after an investment of less than 20*l.*, will be paid to the tenant for life (*Re Lord Egremont*, 12 Jur. 618).

If the surplus exceed 20*l.*, it cannot be paid to the tenant for life (*Ex parte Rector of Bredicot*, 17 L. J. Ch. 414; 5 R. C. 209; *In re Bateman's Estate*, 21 L. J. Ch. 691).

Orders have sometimes been made for payment of sums slightly exceeding 20*l.* to the tenant for life, he undertaking to lay out the money in permanent improvements (*Re Hichin's Estate*, 1 W. R. 505, 20*l.*; *Ex parte Barrett*, 19 L. J. Ch. 415, 30*l.* paid out; *In re Bateman's Estate*, 21 L. J. Ch. 691, 52*l.* refused).

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

73. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interests therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such

lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

8 Vict. c. 18,
s. 74.

This section does not qualify the right of a tenant for life to enter into a contract with the company for the sale of the settled estate. It only affects the right to the purchase-money as between tenant for life and remainderman (*Taylor v. Chichester & Midhurst Ry. Co.*, L. R. 4 H. L. 628).

Tenant for life is a trustee of sums received.

The tenant for life is not entitled to retain a sum paid to him in consideration of his withdrawing his opposition to the company's bill in Parliament (*Pole v. Pole*, 2 Dr. & S. 420).

Nor is the tenant for life of a manor entitled to any part of the money paid in in respect of copyholds, on the ground that it represents a fine which would have been payable to the tenant for life (*Re Wilson*, 2 J. & H. 619; 32 L. J. Ch. 191).

When the company contracted to pay the tenant for life interest at five per cent. on the purchase-money for his own benefit, he was allowed to retain the interest (*In re Hungerford*, 1 Jur. N. S. 845).

Under this section, the tenant for life has been allowed small sums for making new roads and fences, and for injury and inconvenience (*Re Duke of Marlborough*, 13 Jur. 733; *Ex parte Rector of Steeping*, 5 R. C. 207; 14 B. 159, n.; *Re Collis's Estate*, 14 L. T. N. S. 352; *Ex parte Lockwood*, 14 B. 158).

Where a tenant for life has properly incurred costs which the company are not liable to pay, he will be allowed them out of the fund (*Re Aubrey's Estate*, 17 Jur. 874; 1 W. R. 464; *In re Earl of Berkeley's Will*, 10 Ch. 56; *In re Strathmore Estates*, 18 Eq. 339; *In re Oldham's Estate*, W. N. 1871, 120).

Tenant for life allowed costs out of fund.

So where the arbitrator awarded to a perpetual curate less than the company had offered, and the curate had to bear his own costs, he was entitled to be repaid out of the fund (*Ex parte Perpetual Curate of Whitworth*, 26 L. T. N. S. 126).

But a tenant for life will not be allowed out of the fund the costs of opposing the company's bill in Parliament (*In re Earl of Berkeley's Will*, 10 Ch. 56).

Such costs have, however, been given to a trustee (*In re Nicoll's Estate*, W. N. 1877, 154).

Under section 36 of the Settled Land Act, the court may approve of any action, defence, petition to Parliament, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement; and may direct that any costs, charges, or expenses incurred, or to be incurred in relation thereto, be paid out of the property subject to the settlement (see *In re Earl of Aylesford's Estates*, 32 Ch. D. 162).

Costs of protecting settled land.

It seems a mortgagee of the land taken, who has incurred costs which the company are not liable to pay, would be entitled to these costs under just allowances (see *Rees v. Metr. Board of Works*, 28 W. R. 614; 14 Ch. D. 372).

In cases where the tenant for life claims a portion of the fund under this section, the remainderman should be a co-petitioner, or should be served (*In re Strathmore Estates*, 18 Eq. 339; *Re Collis's Estate*, 14 L. T. N. S. 352).

74. Where any purchase-money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for

Court of Chancery may direct application of

3 Vict. c. 18,
ss. 76, 77.

would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase-money to be deposited.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Owner.

The "owner" contemplated by this section is a person having *some* title to the land. The words "failing to make out a good title" are intended to refer to the case of the land being subject to dower or to a rent-charge by way of jointure, or to any other independent estate or interest outstanding in a third party (*Douglass v. L. & N. W. Ry. Co.*, 3 K. & J. 173; *Wells v. Chelmsford Local Bd.*, 15 Ch. D. 108).

A person who has contracted to give a sixty years' title, and fails to do so, cannot compel the company to pay the purchase-money into court under this section (*Douglass v. L. & N. W. Ry. Co.*, 3 K. & J. 173).

It would seem that the company are bound to call upon the owner to make out his title after the compensation has been awarded before they can pay the money into court, though before the assessment he has failed to disclose or prove his title (*Doe d. Hutchinson v. Manchester, Bury & Rossendale Ry. Co.*, 14 M. & W. 687; 3 R. C. 748; 15 L. J. Ex. 208, a case under a special Act).

Adverse claim by Crown.

The Crown cannot be brought before the court under the Act. If, therefore, an adverse claim to the land is set up by the Crown, an application to deal with the fund will be ordered to stand over till the claim is settled. In other cases it would seem that the application would be ordered to be served on the adverse claimants (*In re Manor of Looestoft & G. E. Ry. Co.*, 24 Ch. D. 253).

Conversion.

If the purchase-money for land is paid into court under this section, the land is converted, and the money belongs to the personal representatives of the owner (*Re East Lanc. Ry. Co., Ex parte Flamank*, 1 Sim. N. S. 260. See *Re Harrop*, 3 Dr. 726; *Ex parte Hawkins*, 13 Sim. 569, cases under special Acts).

Upon deposit being made a receipt to be

77. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the

undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

8 Vict. c. 18,
s. 78.

given, and the
lands to vest
upon a deed
poll being
executed.

It would seem that where the company contract for the purchase of lands at a certain sum, and then pay the sum into court under this section, without employing the machinery of the Act to ascertain the value of the land, the effect of the deed poll is to vest in the company only the interest of the person with whom the contract is made (*Ex parte Windsor*, 6 Ch. D. 696).

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Application
of monies so
deposited.

Under this section, a mortgagee, or the company itself as transferee of a mortgage, may petition for payment out (*Re Marriage*, 9 W. R. 843).

Mortgagees
may petition.

The mortgagee is entitled only to six years' interest out of the fund (*In re Stead's Mortgaged Estates*, 2 Ch. D. 713).

Mortgagees of business premises, with the machinery and fixtures, who have entered into possession, are entitled to a sum paid in in respect of trade profits, which would have accrued if the property had not been taken, as well as to the purchase-money of the land (*Pile v. Pile*; *Ex parte Lambton*, 3 Ch. D. 36).

Mortgagees of
business.

Where a landowner had brought an action for specific performance against the company, and obtained a decree declaring that the title had been accepted, and directing the company to pay the purchase-money, and the company paid the purchase-money into court, on the ground that the landowner had shown a title only to a moiety of the property, the money was paid out on a petition under this section, the company admitting that the payment into court was a payment in respect of the purchase-money (*Galliers v. Metropolitan Ry. Co.*, 11 Eq. 410).

Where one sum is paid in to the account of rival claimants, the court, upon a petition, will decide the question of the title of the claimants, and will ascertain the value of the interest of the several claimants by a reference to chambers, though the Act contains no provisions to meet such a case (*Brandon v. Brandon*,

A reference to
chambers
directed.

8 Vict. c. 18,
ss. 79, 80.

13 W. R. 251; 5 N. R. 214; 34 L. J. Ch. 333; 2 Dr. & Sm. 305; *Ex parte Cooper*, 13 W. R. 364; 34 L. J. Ch. 373; 2 Dr. & Sm. 312; *Re Hayne*, 13 W. R. 492; 12 L. T. N. S. 200).

Thus, where one sum is paid in in respect of the claim of a lessee, the sum must be taken to include the value of the lease and damage for severance and loss of trade, and if the lease turns out to be void, the court will direct an inquiry as to what portion of the fund is to be attributed to damage, and the lessee will be entitled to this (*Re Hayne, supra*).

In the same way, if the fund is paid in respect of the interests of a lessor and a lessee whose lease is void, an inquiry will be directed to ascertain whether the value of the land has been increased by the outlay of money by the lessee (*Ex parte Cooper, supra*).

Where the petitioners admitted that they were not entitled to a portion of the land in respect of which the money had been paid in, the fund was directed to be apportioned in chambers, the petitioners paying the costs of the apportionment (*Re Alston's Estate*, 5 W. R. 189. See *Re Perks's Estate*, 1 Sm. & G. 545).

In *Ex parte Ward*, 2 De G. & S. 4; 4 R. C. 398, the court refused to apportion the purchase-money between a lessee and reversioner. The case is probably obsolete.

Even before the Judicature Act a bill was held to lie to determine whether a lessee, whose interest had been taken, was entitled to a renewal of his lease, with a view to ascertain the amount of compensation payable to him (*Bogg v. Midland Ry. Co.*, 4 Eq. 310).

Party in pos-
session to be
deemed the
owner.

79. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

The fact that the title of the petitioner depends on a doubtful question of construction will not disentitle him if he was in fact in possession of the land. The difficulty should be mentioned to the court, but it need not be discussed or argued (*Re Sterry's Estate*, 3 W. R. 561; S. C. nom. *In re Perry's Estate*, 1 Jur. N. S. 917).

Persons who have exercised acts of ownership over the foreshore will be taken to be in possession, and entitled to purchase-money paid in in respect of the foreshore (*Re Alston's Estate*, 5 W. R. 189).

A petitioner who had been in possession of the land for twenty-six years is entitled to payment of the fund, though he may be unable to show that the right of the real owner is barred (*Ex parte Chamberlain*, 28 W. R. 566; 14 Ch. D. 323. See *Re Evans*, 42 L. J. Ch. 357).

Where the petitioner, at the time when the purchase-money was paid into court had a possessory title for nineteen and a half years only, but no claim was made by the true owner until after the expiration of twenty years, it was held that the petitioner was entitled (*Ex parte Winder*, 6 Ch. D. 697. See *Ex parte Hollinsworth*, 19 W. R. 580, where an earlier petition by the same petitioner was refused).

Of course, where there are rival claims to the land which has been taken, and an issue is directed to try the title, the direction in this section that the party in possession is to be deemed the owner unless the contrary is shown, is not to be regarded (*Ex parte Freeman & Stallingers of Sunderland*, 1 Dr. 184).

Costs in cases
of money de-
posited.

80. In all cases of monies deposited (a) in the bank under the provisions of this or the special Act, or an Act incorporated (b) therewith, except where such monies shall have been so deposited

by reason of the wilful (c) refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase (d) or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs (e) of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands (f), and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court (g) of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse (h) claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

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s. 80.

(a) This section applies to all cases where money has been deposited in court, whether under section 69 or 85 (*In re L. B. & S. C. Ry. Co., Ex parte Flower*, 1 Ch. 599; 36 L. J. Ch. 193; *Ex parte Morris*, 12 Eq. 418; *Charlton v. Rolleston*, 28 Ch. D. 237).

And it has been held to apply to a case where the company having taken possession of certain lands under section 85 afterwards abandoned that part of their undertaking and delivered up the lands (*Charlton v. Rolleston*, 28 Ch. D. 237).

But the court has no power to direct the costs to be paid out of any particular fund, such as the money deposited under section 85 (*In re Neath & Brecon Ry. Co.*, 9 Ch. 263).

Costs not paid out of any particular fund.

The section does not apply to a case of purchase from an absolute owner, where the money is placed by arrangement in a bank (*Re Eastern Counties Ry. Co.*, 26 L. T. 176).

By the rules of the Supreme Court, 1883, order 65, "the costs of and incident to all proceedings in the Supreme Court" shall be in the discretion of the Court.

Costs in the discretion of the court.

It has been held that the order applies only to costs incurred after the proceedings have actually come into the High Court (*In re Brandreth's Trade Mark*, 9 Ch. D. 619; *In re Hargreaves' Trade Mark*, 11 Ch. D. 669, 675).

The Judicature Act and the Rules of Court do not give the court jurisdiction to order payment of costs in cases where there was previously no jurisdiction to make such an order (*In re Mills' Estate*, 34 Ch. D. 24: overruling *Ex parte Mercers' Co.*, 10 Ch. D. 481; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378; *Re Lee & Hemingway*, 24 Ch. D. 669).

Power of court as to costs.

The cases decided upon the question of costs under Acts not incorporating the Lands Clauses Acts are therefore still authorities. They may be briefly summarised as follows:—

Costs before the Lands Clauses Act.

Where the special Act, though providing for the costs of investment in land, contains no provision for payment out of court to persons absolutely entitled, the costs of a petition for such payment are not payable by the company (*In re Metford*, 6 Jur. N. S. 796; *In re Musgrave*, *ib.* 797; *In re Macclesfield Canal Act*, *In re Ackers*,

No provision for costs of payment out.

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9 Jur. N. S. 224; *In re Land's Trusts*, 4 K. & J. 81; *In re Gould*, 24 Beav. 442; *In re Williams' Estate*, 12 Eq. 488; *In re Charity Schools of St. Dunstan-in-the-West*, 12 Eq. 537. The case of *In re Saunders' Estate*, 8 Eq. 681, is not easily reconcilable with these authorities; see 7 Ch. D. 184. The same may be said of *In re Spitalfields Schools & Commrs. of Woods & Forests*, 10 Eq. 671).

The old Exchequer practice.

The practice of the Court of Exchequer had been to allow these costs, but the Court of Chancery refused to follow this practice even in matters pending in the Exchequer, when its equitable jurisdiction was transferred to the Court of Chancery (*In re Mousley's Trusts*, 4 K. & J. 86, n.; *In re Motford*, 6 Jur. N. S. 796; *Ex parte Ecclesiastical Commrs.*, 6 N. R. 483; *In re Harrison's Estate*, 10 Eq. 532; overruling *In re Robertson*, 23 Beav. 233; *In re Tiverton Market Act*, 26 Beav. 239).

Whether interim investment is a purchase.

Where a section authorised interim investment and purchase of lands, and a subsequent section directed that where the money was to be laid out in the purchase of land, the court might order the expenses of all purchases in pursuance of the Act to be paid by the company, an investment was held a purchase within this section (*In re Mercer*, 7 Ch. D. 184; a case which may be reconcilable, but is not easy to reconcile with *Ex parte Cooke, Re Liverpool & Manch. Ry. Co.*, 3 R. C. 135; *Ex parte Molyneux*, 2 Coll. 273, and *In re Gould*, 24 Beav. 442).

L. C. Act applies to subsequent Acts not providing for costs.

(b) Where Acts passed after the Lands Clauses Consolidation Act, giving powers for public purposes, provide for certain classes of costs, but not for others, the latter are governed by the provisions of the Lands Clauses Consolidation Act, though the special Acts do not in terms incorporate the Lands Clauses Acts (*In re Westminster Estate of the Parish of St. Sepulchre*, 4 D. J. & S. 232; 33 L. J. Ch. 372; *In re Wood's Estate*, 31 Ch. D. 607).

The words in this section, "an Act incorporated" with the special Act, refer as well to an earlier Act, some of the provisions of which are brought forward into the special Act, as to Acts passed after the special Act (*Ex parte Eton College*, 20 L. J. Ch. 1; 15 Jur. 45; *In re Ellison's Estate*, 8 D. M. & G. 62; *Lanc. & Yorkshire Ry. Co. v. Evans*, 15 Beav. 322).

Thus, where an Act passed before the Lands Clauses Consolidation Act contained no provision for certain costs, and that Act was repealed, and a new company established by an Act after the Lands Clauses Consolidation Act, a provision that the purchase-money should be applied pursuant to the original Act will not exclude the provisions of the Lands Clauses Consolidation Act with regard to costs not provided by the original Act (*Ex parte Eton College*, 20 L. J. Ch. 1; 15 Jur. 45).

It makes no difference that the money has been carried to a separate account, and the conveyance executed before the incorporating Act passes (*In re Ellison's Estate*, 8 D. M. & G. 62; overruling *In re Neachell's Trusts*, 3 W. R. 634).

L. C. Act excluded by express terms.

On the other hand, the language of the incorporating Act may be so strong as to exclude the application of the Lands Clauses Consolidation Act.

Thus, where an Act passed subsequently to the Lands Clauses Consolidation Act, 1845, directed that certain monies to be raised under it should be applied as if raised under an earlier Act, which passed prior to the Lands Clauses Consolidation Act, 1845, it was held that the money could only be applied in payment of such costs as the earlier Act allowed, and that the Lands Clauses Consolidation Act, 1845, was excluded (*In re Cherry's Estate*, 31 L. J. 351; 4 D. F. & J. 332; *In re Charity Schools of St. Dunstan-in-the-West*, 12 Eq. 537; *In re Mills' Estate*, 34 Ch. D. 24. *In re Spitalfields Schools and Commrs. of Woods & Forests*, 10 Eq. 671, is inconsistent with these authorities (see, too, *In re Wood*, 31 Ch. D. 607).

The Lands Clauses Consolidation Act has been held to be excluded where the subsequent Act expressly provided that the costs of re-investment of money paid in under a repealed Act should follow the provisions of the repealed Act (*Re St. Katharine Docks Co.*, 14 W. R. 978).

Wilful refusal.

(c) A wilful refusal here means a capricious refusal.

Thus, a refusal to accept the purchase-money because the person refusing *bond fide* wishes to contest the award, and commences an unsuccessful action for that purpose, is not a wilful refusal (*Ex parte Bradshaw*, 16 Sim. 174; *Re Metr. Dist. Ry. Co.*, 17 W. R. 186. See *In re Windsor, Staines & S. Western Ry. Act*, 12 Beav. 522).

Refusal under advice.

Nor is a refusal to accept based upon a *bond fide* opinion of counsel a wilful refusal (*Ex parte Railton*, 15 Jur. 1028; *In re Commrs. of Ryde*, *Ex parte Dashwood*, 5 W. R. 125; 3 Jur. N. S. 103).

Inability to convey.

Inability to convey by reason of not having paid off incumbrances of larger amount than the value of the land, is not refusal or neglect (*In re Crystal Palace Ry. Co.*, *In re Divers*, 1 Jur. N. S. 995).

Failure to deliver a statement of title within the prescribed time is a wilful refusal (*In re Corp. of Dublin*, *Ex parte Dowling*, 7 L. R. Ir. 173).

A refusal to take the purchase-money without payment of costs as well, is a wilful refusal, and disentitles the petitioner to costs. If the company has called upon the sheriff to put them in possession, the vendor must pay the sheriff's costs (*Re Turner's Estate, Re Metr. Ry. Act*, 10 W. R. 128; 5 L. T. N. S. 524).

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(d) Upon a petition dealing with a fund in court, the court has no jurisdiction to order the company to pay costs incurred prior to the payment into court, by reason of the illegal action of the company (*Haynes v. Barton*, 9 W. R. 777; 1 Dr. & S. 483).

Costs of illegal proceedings.

Where the property taken is the subject of an administration action, and applications in the action are necessary, the company must bear the costs of such applications.

Costs of application in administration action.

Thus, the company must pay the costs of a reference in the action to inquire whether the company should be required to take the whole, and how the compensation should be ascertained (*Picard v. Mitchell*, 12 Beav. 486); and of orders enabling a receiver in the action, or trustees, to enter into an agreement with the company (*Heniker v. Chafy*, 28 Beav. 621; *Haynes v. Barton*, 1 Dr. & Sm. 483).

So, if it is necessary to present a petition in the action, the company must pay the costs of the petition and of all persons properly appearing (*Haynes v. Barton*, 1 Eq. 422).

In the same way, if the lands taken are the lands of a lunatic, the costs of obtaining all necessary orders for the carrying out of the purchase are payable by the company (*Re Taylor*, 1 Mac. & G. 210; 6 R. C. 741).

Costs of applications in lunacy.

So, where the vendor died before conveyance, leaving an infant heir, costs of proceedings to procure the appointment of a person to convey, were payable by the company where the case was within this section (*In re Manchester & Southport Ry. Co.*, 19 Beav. 365. As to such costs under section 82, see *post*).

Getting in legal estate.

Upon petition by the committee of a lunatic for leave to convey, and to have the purchase-money carried over to the credit of the lunacy, the heir-at-law, and next of kin of the lunatic, are necessary parties, and their costs of proceedings in chambers and of appearing upon the petition, must be paid by the company (*Re Walker*, 7 R. C. 129; *In re Briscoe*, 2 D. J. & S. 249).

Costs of heir of lunatic.

The costs of apportioning the rents, where a part of lands in lease is taken, are payable by the company (*In re L. B. & S. C. Ry. Co., Ex parte Flower*, 1 Ch. 599; 36 L. J. Ch. 193).

Apportioning rents of leaseholds.

Where proceedings were taken to summon a jury, and an agreement was then come to, the company agreeing to pay such costs as they were liable to pay under the Lands Clauses Act, the costs of the proceedings to summon a jury were held to be payable by the company (*Ex parte Morris*, 12 Eq. 418; see *Charlton v. Rolleston*, 28 Ch. D. 237).

Costs of ascertaining the value of land before an arbitrator have been allowed under this section, though the special Act empowered the arbitrator to award costs (*In re Pardoe's Account*, W. N. 1882, 33).

(e) It will be noticed that this section in terms only authorises the court to throw the costs of applying the purchase-money upon the company in the following cases:—Investment in government or real securities; re-investment in land; payment of dividends and payment out of court.

What costs within the section.

No provision is therefore made for the costs of redeeming land-tax, of discharging incumbrances, of removing or replacing buildings injured or substituting buildings for buildings taken, all modes of applying the purchase-money authorised by section 69.

The court has, however, in some cases, supplied the omissions of the section by construction; in others it has refused to do so.

Thus it may be taken to be settled that the company must pay the costs of applying the money in the redemption of land-tax (*Ex parte Northwich*, 1 Y. & C. Ex. 166; *Ex parte Trafford*, 2 Y. & C. Ex. 522; *Re London & Brighton Ry. Co.*, 18 Beav. 608, 611; *Ex parte Boddoss*, 2 Sm. & G. 466; *In re Bethlehem Hospital*, 19 Eq. 457).

Costs of redeeming land-tax.

On the other hand, the costs of applying the money in discharging incumbrances, have been held not payable by the company (*Ex parte Earl of Hardwicke, In re Eastern Counties Ry. Co.*, 17 L. J. Ch. 422; *In re Yeates & Lancaster & Carlisle Ry. Co.*, 12 Jur. 279; *Ex parte Sheffield Town Trustees*, 8 W. R. 602; *In re Lord Stanley of Alderley's Estate*, 14 Eq. 227. The last two cases were decided on Acts not substantially differing from the Lands Clauses Consolidation Act on this point).

Discharging incumbrances.

The company must, however, pay the costs of the petition and the consequent order (*In re Mark's Trusts*, W. N. 1877, 63).

On the other hand, though the purchase of an old lease upon part of the settled land is allowed under section 69 as being the discharge of an incumbrance, the costs have been held to be payable by the company under this section, on the

Purchasing old lease.

- § Vict. c. 18, s. 80.** ground that the purchase of a lease is an investment in land (*Ex parte Corporation of Sheffield*, 21 Beav. 162; *Ex parte Bishop of London*, 2 D. F. & J. 14; *Ex parte Corporation of London*, 5 Eq. 418, more clearly reported, 37 L. J. Ch. 375. In these cases investment in leaseholds was expressly authorised by the Episcopal and Capitular Estates Act, 14 & 15 Vict. c. 104, s. 7. But it would not seem that this fact would affect the right to costs under the Lands Clauses Consolidation Act, or afford a ground for supporting *In re Manchester & Sheffield, &c. Ry. Co.*, *Ex parte Corporation of Sheffield*, 21 Beav. 162).
- Laying out fund in building, &c.** With regard to the cost of laying out the money in building, the company must bear the costs of a petition for that purpose, including the costs of the additional evidence necessary to prove the advisability of the outlay (*Re Incumbent of Whitfield*, 9 W. R. 764; 1 J. & H. 610; *Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549; *Re Lathropp's Charity*, 35 Beav. 297; 1 Eq. 467; *Ex parte Rector of Claypole*, 16 Eq. 574; *Ex parte Rector of Holywell-cum-Needingworth*, 27 W. R. 707. The case of *Re Buckinghamshire Ry. Co.*, 14 Jur. 1065, may be considered overruled).
- Certificate of completion.** But in cases where the money is not to be paid till a surveyor has certified that the buildings have been duly completed, the company will not have to pay the costs of this certificate, nor are they liable to pay the architect's or surveyor's fees in relation to the plans for the new buildings (*Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549; *Re The Butchers' Company*, 53 L. T. 491).
- Petition to remove building.** The costs of a petition to apply the fund in removing, rebuilding, or replacing buildings injured by the company, are payable by the company (*Ex parte Thorne's Charity*, *Re Southampton & Dorchester Ry. Act*, 12 L. T. 266; *Re Kent Coast Ry. Co.*, *Ex parte Dean of Canterbury*, 10 W. R. 505; *Re Chelsea Waterworks Co.*, *Ex parte Churchwarden of St. John's, Fulham*, 28 L. T. 173. The case of *In re Oxford, Worcester & Wolverhampton Ry. Co.*, *Ex parte Devises of Milward*, 29 L. J. Ch. 245; 27 Beav. 571, may be considered overruled).
- Enfranchising copyholds.** So the costs of a petition for laying out the fund in providing temporary accommodation, in lieu of buildings taken, have been thrown upon the company, though a special Act had been obtained to sanction the outlay (*In re St. Thomas's Hospital*, 11 W. R. 1018).
- Interim investment.** The costs of enfranchising copyholds are payable by the company (*Re Chesnut Coll.*, 1 Jur. N. S. 995; 3 W. R. 638; *Dizon v. Jackson*, 26 L. J. Ch. 588).
- Investment pending purchase of land.** Costs of interim investment include broker's commission (*Ex parte Corporation of Trinity House*, 3 Ha. 95; *Ex parte Harborough*, 17 Jur. 1045; *In re Kendal & Westmoreland Ry. Act*, *In re Braithwaite's Trust*, 1 Sm. & G. App. 15).
- Periodic sales of corpus.** The order directs the investment without deducting brokerage, the petitioner undertaking to pay the same, and the company is directed to pay the amount (*In re Braithwaite's Trust*, *supra*).
- Powers of attorney and affidavits.** The company must pay the costs of a petition for interim investment, though a contract for the purchase of land has been entered into (*In re The Liverpool, &c., Ry. Co.*, 17 Beav. 392).
- Apportioned dividend.** Where periodic sales of *corpus* are ordered, the order will not direct the costs of such periodic sales to be taxed from time to time and paid. But these costs will be taxed under the common order, and the company must pay them (*Re L. C. & D. Ry. Co.*, *Ex parte Edmunds*, 14 W. R. 507; 35 L. J. Ch. 538. See *Re Long's Estate*, 1 W. R. 226).
- Legatee of tenant *pur autre vie*.** It seems that the costs of powers of attorney and affidavits necessary for procuring the payment of dividends after an order has been made, are payable by the company (*Ex parte Incumbent of Guilden Sutton*, 8 D. M. & G. 380; *Ex parte Eccles Commrs.*, 39 L. J. Ch. 623. See *Ex parte Athorpe*, *In re Hull & Selby Ry. Act*, 3 Y. & C. Ex. 396; *Mitchell v. Newell*; *Re Manchester & Leeds Ry. Act*, 3 R. C. 515; cases under special Acts containing provisions under which such costs have not been allowed).
- Costs incurred because original order badly drawn.** Where an order has been made to pay dividends to A. during his life, A.'s executor's can obtain an apportioned part of the dividend without a fresh order; a petition ought therefore not to be presented for this purpose (*Re Jolliffe's Estate*, 9 Eq. 668; Supreme Court Funds Rules, 1886, Rule 62).
- So it would seem that after an order to pay dividends to A. during B.'s life, the costs of a petition after A.'s death for payment of the dividends during the residue of B.'s life to the persons entitled under A.'s will, ought not to be thrown upon the company (*In re Byrom*, 5 Jur. N. S. 361; 7 W. R. 367. *Re Lye's Estate*, 13 L. T. N. S. 664, where the costs were thrown upon the company, is probably not satisfactory).
- Where an order has been made for payment to trustees without providing for payment to the trustees for the time being, so that it becomes necessary upon the appointment of new trustees to present a petition for payment to them, it is doubtful whether the company must pay the costs of the petition. The cases are conflict-

ing, and almost equally numerous each way. In *Re Gos's Estate*, 24 L. T. 152; 3 W. R. 119; *In re Metr. Ry. Co. & Maire*, W. N. 1876, 245; *Re Bazett's Trustees*, 16 L. T. 279; the company was directed to pay the costs.

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s. 80.

On the other hand, in *Ex parte Hordern*, 2 De G. & S. 263 (after order to pay A. and B., a spinster, B. married. Petition presented for payment to A. and B.'s husband); *Re Audenshaw School*, 1 N. R. 255; *In re Pryor's Settlement*, 35 L. T. N. S. 202; W. N. 1876, 141, the court refused to throw these costs upon the company.

As the authorities stand at present it is therefore the interest both of the company and the petitioners to see that a proper order is drawn up, so as to avoid the necessity of future petitions.

On the other hand, where dividends have been ordered to be paid to charity trustees, and the charity having become useless, a new scheme is sanctioned and new trustees are appointed, the company must pay the costs of a petition for payment of the dividends to the new trustees (*In re The Shakespeare Walk School Estate*, 48 L. J. Ch. 677; 12 Ch. D. 178).

Petition for
payment to
new trustees
of a charity.

But the company will not be ordered to pay the costs of a new scheme which has become necessary because charity lands have been taken (*In re St. Paul's Schools*, 31 W. R. 424; 52 L. J. Ch. 454; 48 L. T. 412).

Costs of
scheme.

A person, who after having become absolutely entitled to a fund, resettles it and presents a petition for payment of the dividends to himself, is not entitled to costs against the company (*In re Pick's Settlement*, 31 L. J. Ch. 495).

It is clear that where there has been an investment upon real security without any previous investment, the company must pay the cost of a subsequent permanent investment (*In re W. Smith's Estate*, 9 Eq. 178; *In re Sewart's Estate*, 18 Eq. 278).

Costs of in-
terim invest-
ment in land.

Where there has been a prior interim investment, followed by an interim investment on real security, there is some doubt whether the company would have to pay the costs of a subsequent final investment in land. In the cases of *In re Lomax*, 34 Beav. 294; *Re Wilkinson*, 16 W. R. 537; 37 L. J. Ch. 384; and *In re Flemon's Trusts*, 10 Eq. 612, it was held that they would not. But in *In re Blyth's Trusts*, 16 Eq. 468, the Lord Chancellor, sitting for the M. R., refused to impose any conditions upon the petitioner as regards future investment, and this decision must be taken to have settled the practice. See *In re Sewart's Estate*, 18 Eq. 278.

(f) Where the purchase-money has been paid, and the conveyance executed before the reference as to title, the company will not be liable for the costs of the purchase (*Ex parte Bouverie*, 5 R. C. 431).

Money paid
before refer-
ence as to
title.

The whole sum need not be invested in land by a single purchase, or on one petition, but the company must pay the costs of several petitions for investment of portions of the fund.

To disentitle the petitioners to costs of numerous investments of small portions of the fund, a case of vexatious and unnecessary expense must be made out (*Ex parte Fishmongers' Co.*, 1 N. R. 85; 11 W. R. 81; *Re Brandon's Estate*, 2 Dr. & S. 162; *Re Hereford, Hay & Brecon Ry. Co.*, 13 W. R. 134; *Re Trustees of St. Bartholomew's Hospital*, 4 Dr. 425. See, too, *Ex parte Trustees of Burmoor*, 3 R. C. 513 (2 purchases allowed); *In re St. Katharine's Docks Co.*, 3 R. C. 514 (3 purchases); *Ex parte Provost of Eton Coll.*, 3 R. C. 271 (2 purchases); *Jones v. Lewis*, 19 L. J. Ch. 439; 2 Mac. & G. 163; 2 H. & T. 406; *Re London & Birmingham Ry.*, *Ex parte Bouverie*, 4 R. C. 229; *In re Merchant Taylors' Company*, 10 Beav. 485 (4 investments, last of 631.; *Ex parte Hospital of St. Katherine*, 17 Ch. D. 378).

Investment in
several
purchases.

Where a contract for purchase is approved by the court, but the purchase goes off because the vendor cannot make a good title, the company must pay the costs of the abortive inquiry (*Ex parte Rector of Holywell*, *Re Wisbeach, St. Ives, & Camb. Jn. Ry. Co.*, 13 W. R. 960; 2 Dr. & S. 463; 35 L. J. Ch. 28; *In re N. Staffordshire Ry. Co.*, *In re Vaudrey's Trusts*, 30 L. J. Ch. 885; 3 Giff. 224; *Re Carney*, 20 W. R. 407).

Abortive
purchase.

But the company does not pay the costs if the contract is not approved (*Ex parte Stevens*, 16 Jur. 243; *In re Woolley's Estate*, *In re East and West India Docks and Berm. Jn. Ry. Act*, 17 Jur. 560).

Nor will the company pay the costs if the contract is abandoned at the petitioner's request (*Ex parte Copley*, 4 Jur. N. S. 297).

If the contract is not approved it seems the company will get their costs out of the fund (*In re Woolley's Estate*, 17 Jur. 860; 1 W. R. 407; *In re Hardy's Estate*, 18 Jur. 370).

Where other money, besides the fund in court, is invested at the same time, the company does not pay the extra costs, if any, such as the extra stamp duty occasioned by the additional amount invested (*Ex parte Corporation of Carlisle*, 1 W. R. 103; *Re Sheffield & Linc. Ry. Co.*, *Ex parte Hodge*, 16 Sim. 159; *In re Southampton & Dorchester Ry. Co.*, *Ex parte King's Coll.*, Cambridge, 5 De G. & S. 621; *Re Bran-*

Fund in court
invested with
other money.

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Where land
to be pur-
chased is being
administered.

Costs of pur-
chase.

Reference as
to title.

Enrolling
deeds.

Purchase of
copyholds.

Investment
by absolute
owner.

Proof of
title.

Power of
attorney.

Costs of dis-
entailing
deed.

Several funds
in court
should be in-
vested on one
petition.

mer's Estate, 14 Jur. 236; *In re Loveband's Settled Estates*, 30 L. J. Ch. 94; 9 W. R. 12; *Att.-Gen. v. Mayor of Rochester*, 15 W. R. 765; Seton, 1085).

In a case where money was to be invested in land in an administration suit, and a petition was presented in a different branch of the court, asking that a fund paid into court under the Lands Clauses Act might be applied with the other money, it was held that the company was only liable to pay the costs of the petition, but not any costs of the purchase (*Re Bagot's Settled Estates*, 14 W. R. 471).

The costs of the purchase payable by the company will be restricted to such costs as would have fallen on the purchaser under an open contract (*Ex parte Goss. of Christ's Hospital*, 20 Eq. 605; *In re Temple Church Lands, Bristol*, 26 W. R. 259; 47 L. J. Ch. 160).

Upon this principle where the fund was to be invested in charity lands, and a petition became necessary under Sir S. Romilly's Act, the company was not ordered to pay the costs of this petition (*In re N. Staffordshire Ry. Co., Ex parte Incumbent of Alsager*, 4 W. R. 324).

On the other hand, where the land to be bought was sold in a suit, the costs of a petition in the suit for approval of the contract, in addition to the costs of the petition under the Lands Clauses Act, were thrown upon the company (*Cargmael v. Proffit*, 17 Jur. 875; 23 L. J. Ch. 165).

Where the vendor died, leaving an infant heir, so that a suit by the petitioners was necessary to procure a conveyance, the costs of the suit were held not payable by the company, on the ground that such costs were costs of adverse litigation (*Armitage v. Askham*, 1 Jur. N. S. 227).

The costs of the reference as to title are payable by the company, and in a difficult case the owner is entitled to employ his own counsel, and the costs of consultations between such counsel and the conveyancing counsel of the court will be allowed, but not the whole costs of investigating the title by private counsel (*Re Jones's Settled Estates*, 6 W. R. 762).

Where the consent of the bishop to an investment was required, the bishop was held entitled to his costs of attending a reference as to title in chambers, and also of appearing upon the petition (*Ex parte Vicar of Creech St. Michael*, 21 L. J. Ch. 677).

Costs of enrolling a purchase deed of lands conveyed to charitable uses are payable by the company (*In re Goss. of Christ's Hospital*, 12 W. R. 669).

Upon investment in copyholds the company pay the fees, but not fines, on admission (*Ex parte Vicar of Sawston, In re Eastern Counties Ry. Co.'s Act*, 6 W. R. 492; 27 L. J. Ch. 755; 4 Jur. N. S. 473).

(g) Persons absolutely entitled may petition to have part paid out to them, and the rest invested in land, and the company must pay the costs (*Re Jones's Trust Estate*, 39 L. J. Ch. 190).

Where the money is paid out to the official trustee of charitable funds, to be applied in part payment for lands already purchased, the company cannot be made to pay any part of the costs of the purchase (*Ex parte Horfield's Trust*, W. N. 1881, p. 16; 29 W. R. 462).

The costs of investigating the title of a person claiming to be absolutely entitled to the fund as heir, are payable by the company, except such costs as are occasioned by affidavits in opposition to the claims (*In re Spooner's Estate*, 1 K. & J. 220; *In re Singleton's Estate*, 9 Jur. N. S. 941).

Costs of preparing and verifying the execution of a power of attorney from parties residing in Jersey, on payment out, were allowed under a special Act (*In re Godley*, 10 Ir. Eq. 222).

Costs of a disentailing deed are payable by the company (*Re Devises of Nicholas Brooking & S. Devon Ry. Co.*, 2 Giff. 31; but see *Ex parte Allen*, 7 L. R. Ir. 124).

The company must pay the costs of a petition to transfer the fund to a separate account in court, from which the name of the company is omitted, such transfer being equivalent to payment out (*Melling v. Bird*, 22 L. J. Ch. 599; 17 Jur. 155; *Re Bristol Free Grammar School*, 47 L. J. Ch. 317).

After two petitions for payment out had failed, because the title of the petitioner was not established, the court refused to order the company to pay the costs of a third successful petition (*Ex parte Winder*, 6 Ch. D. 696).

It should be remembered that the court will disallow the costs of unnecessary petitions.

Thus, when funds paid into court by different companies are to be invested, this should be done as far as possible by one petition (*Ex parte Lord Broke*, 11 W. R. 505; 1 N. R. 658).

So where petitioners are entitled to a fund partly under a will and partly under a settlement, with different trustees, they should present only one petition for payment out of court (*In re Pattison's Estates*, 4 Ch. D. 207).

Funds belonging to the same owners, but paid into court by different companies, should, as far as possible, be dealt with in the same branch of the court. If, after they have been dealt with in different branches, it is desired to invest the whole fund in one purchase, one petition should be presented to the judge in whose court the larger fund is, and the consent of the other judge to deal with the fund should be obtained (*In re Gore Langton's Estates*, 10 Ch. 328; and see *Re Browne's Trusts*, 14 W. R. 298).

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Funds in different branches of court.

It appears that when a fund has been dealt with on petition presented in one branch of the court, it is not necessary, though it is usual, that subsequent petitions dealing with the same fund should be presented in the same branch (*Re Bilston Curacy*, 10 W. R. 516; *Ex parte Trustees of Hayter's Trust*, *ib.* 557).

Under the old practice, where several funds of the same owners had been dealt with in different branches of the court, it was not necessary that the matter should be transferred into one court; but it seems the leave of the Lords Justices was necessary to enable the matter to be dealt with by one branch of the court upon one petition (*In re Lord Arden's Estates*, 10 Ch. D. 464).

Transfer.

This jurisdiction is now transferred to the Lord Chancellor by Order XLIX. rule 1, and the Court of Appeal has no power to order a transfer (*In re Boyd's Trusts*, 1 Ch. D. 12).

The Lord Chancellor will direct a transfer on a written application to his secretary, accompanied by the written consent of all parties. If the parties do not consent, the application must be made to the Lord Chancellor in court (Memorandum, 1 Ch. D. 41).

Present practice.

The court has now no power to rehear a petition after an order has been made upon it. An order made by a judge can be varied only by the Court of Appeal, and the Court of Appeal has, it seems, no jurisdiction to vary an order made by itself (*In re St. Nazaire Co.*, 27 W. R. 845; 12 Ch. D. 88; *Flower v. Lloyd*, 6 Ch. D. 297).

Appeal.

With regard to the service of petitions, persons served without tender of the costs of perusing the petition, and with no intimation that the costs of their appearance will be objected to, are entitled to their costs from some one (*Clark v. Simpson*, 6 Eq. 337; *Wood v. Boucher*, 6 Ch. 77).

Service of petition.

But the company will be ordered to pay these costs only if the service was properly made.

And in certain cases, though the company will be ordered to pay the costs of serving the petition upon parties, it will not be ordered to pay the costs of their appearance if the court considers such appearance unnecessary.

Where service and a tender for costs has been properly made, the company will be liable to pay the sum tendered, as well as the costs of an affidavit of service (*In re Halstead United Charities*, 20 Eq. 48).

The proper course, therefore, for petitioners to adopt in order to protect themselves in cases where service of the petition is necessary, is to tender thirty shillings for the costs of consulting a solicitor, and to intimate that the petitioner will object to the payment of the costs of appearance out of the fund, but without prejudice to the right of the persons appearing to get their costs of appearance from the company, if the court should think fit to order the company to pay them (see Order LXV. rule 19; *In re Duggan's Trusts*, 8 Eq. 697).

Tender of costs.

Where a company and its secretary are served, one tender of thirty shillings is sufficient (*In re Mitchell*, 17 Ch. D. 515).

Where the consent of the Church Estates Commissioners and Copyhold Commissioners was required to an investment of money representing lands belonging to an episcopal see, it was held that such consent should have been obtained in writing without serving the petition on them (*Ex parte Bishop of London*, 2 D. F. & J. 14).

In the same way, the costs of the Governors of Queen Anne's Bounty, where they have agreed to advance a portion of the moneys to be invested, are not payable by the company (*Re Incumbent of Whitfield*, 1 J. & H. 610; 7 Jur. N. S. 909).

The usual practice is to serve the petitions dealing with funds paid in by a company, upon the company. The company, however, may be made a co-petitioner in a petition for interim investment and payment of dividends; but, it seems, the better course is to make the company a respondent, and serve them in the usual way (*In re King Edward's VI.'s Almshouses at Saffron Walden*, 37 L. J. Ch. 664).

Service on company.

Where the company joined as co-petitioners, their seal to the petition was held unnecessary, no payment to the company being asked for (*ib.*).

It has been held that upon a petition for investment in land, the company need not be served (*In re Leeds & Thirsk Ry. Co.*; *Ex parte Rector of Kirkby Overblow*, 19 L. J. Ch. 329). This may be correct, but it is difficult to see how any order can be made in such a case directing the company to pay the costs.

In one case, where an order had been made to pay the dividends to A. and B.,

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Interim investment:
who should be served.

a spinster, and upon B.'s marriage a petition was presented, asking that the dividends might be paid to A. and B.'s husband, it was held that the company ought not to have been served, and that they were entitled to their costs (*Ex parte Hordern, In re Grand In. Ry. Acts*, 2 De G. & S. 263).

Upon a petition for interim investment and payment of the dividends to a tenant for life, who is in possession, mortgagees having charges upon the life interest, or upon the fee prior to the life interest, should not be served (*In re Lanc. & Yorkshire Ry. Co., Ex parte Smith*, 19 L. J. Ch. 56; 6 R. C. 150; *Re Thomas' Trusts*, 12 W. R. 546; 10 Jur. N. S. 307; *In re Hungerford's Trusts*, 3 K. & J. 455; *In re Webster*, 2 Sm. & G. App. 6; *Re Morris' Settled Estates*, 23 W. R. 851; 20 Eq. 470; overruling *Re Brooke*, 10 W. R. 35; 30 Beav. 238).

And the same has been decided with regard to an annuitant, with power of distress, though no conveyance had been made, and the annuitant was not bound (*Ex parte Cofield*, 11 Jur. 1071).

In *Re Smith*, 14 W. R. 218; 13 L. T. N. S. 626, where the costs of appearance of incumbancers on the life estate were allowed, there may have been special circumstances, as service on them appears to have been required by the judge.

Mortgagees in possession should be served, and the costs of serving them are payable by the company. Under the present practice, the usual tender should be made, and they ought not to appear merely to consent (*In re Nash*, 4 W. R. 28; 25 L. J. Ch. 20; 19 Jur. 1082).

Upon a petition for interim investment, neither remaindermen nor trustees representing them should be served (*In re Dowling's Trusts*, 24 W. R. 729; 45 L. J. Ch. 568).

Where the fund was vested in trustees, the costs of their appearance on a petition for investment was allowed in *In re Duke of Cleveland's Harle Estate*, 9 W. R. 882; 1 Dr. & S. 46; 29 L. J. Ch. 530, a case under the old Settled Estates Act.

In *Re Finch's Estate*, 14 W. R. 472, upon petition for interim investment by a person entitled under a lease for ninety-seven years, if he should so long live, the company was charged with the costs of appearance of trustees, in whom the fee was vested subject to the lease.

Under the present practice, however, it seems that in such cases thirty shillings for costs should be tendered, with notice that the petitioners will object to pay the costs of appearance out of the fund (see *In re Pattison's Estates*, 4 Ch. D. 207).

In the case of a married woman entitled for life to her separate use, the husband should be a co-petitioner, and ought not to be served (*In re Osborne's Estate*, W. N. 1878, 179).

Where it is necessary to serve the official solicitor under the Chancery Funds Amended Orders, 1874, rule 14, and the Supreme Court Funds Rules, 1886, rule 101, because the fund has not been dealt with for fifteen years, the company has not to pay the official solicitor's costs (*In re Clarke's Estate*, 21 Ch. D. 776).

The costs of making an interim investment of the fund in securities authorized by the Settled Land Act must be paid by the company (*In re Hanbury's Trusts*, W. N. 1883, 116).

Purchase of land: who should be served.

On petition for investment in land, the vendors should not be served (*In re Yorkshire, Doncaster, & Goole Ry. Co., In re Dylar's Estate*, 1 Jur. N. S. 975).

If they are served and appear, they will get their costs out of the fund (*Ib.*).

Where a fund representing freeholds is to be invested in freeholds, or a fund representing copyholds in copyholds, the remainderman should not be served (*Ex parte Staples*, 1 D. M. & G. 294, better reported sub nom. *Re Browne & Oxford & Bletchley Junction & Buckinghamshire Ry. Acts*, 6 R. C. 733).

Discharge of incumbrance.

It seems, where the money is to be applied in discharge of any debt or incumbrances within the meaning of the section, service of the petition upon the remainderman is not necessary (*In re Commissioners of Church Temporalities, Ex parte Lord Leonfield*, 1 R. 8 Eq. 559).

It has, however, been held in such a case that the company must pay the costs of service upon and appearance of remaindermen (*Re Furness Ry. Co.; Re Romney*, 3 N. R. 287).

In any special case, for instance, when purchase-money of freeholds is to be laid out in copyholds, it would seem all the parties interested should be served (*In re Cann's Estate*, 19 L. J. Ch. 376; 15 Jur. 3).

So, too, where it is proposed to invest the purchase-money in any other way than in lands, as, for instance, in new buildings, the remainderman must be served, and his opposition would appear to be fatal (*In re Leigh's Estate*, 6 Ch. 887).

Where the petition is simply for the investment of money in land, mortgagees and annuitants, whose rights are not otherwise affected, should be served with a copy of the petition and the usual tender (*In re Gore Langton's Estates*, 10 Ch. 328; overruling *In re Eastern Counties Ry. Co., Ex parte Peyton*, 4 W. R. 380; *Re Brooke*, 30 Beav. 233; 10 W. R. 35).

It would seem that the company ought not to pay the costs of serving incumbancers, whose incumbrances have been created since the date of payment into court (see *In re Jones' Trust Estate*, 18 W. R. 312; 39 L. J. Ch. 190; *Ex parte Peyton*, 4 W. R. 380; *Ex parte G. W. Ry. Co.*, *In re Gough*, 24 Ch. D. 569).

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It has been said that trustees, to whom the land is conveyed, need not be served (see *Re Bowes*, 12 W. R. 929; *In re Gore Langton's Estates*, 10 Ch. 328, judgment of Malins, V.-C., p. 331, note).

Where the fund in court represents land belonging to a corporation, over which the freemen had rights of pasturage, the court will not allow steps for the final application of it to be taken, unless it be satisfied that the freemen are represented (*Re Great Northern Ry. Co.'s Act*, 6 R. Ca. 738; 21 L. J. Ch. 621).

Commoners.

Where the fund is to be paid to trustees having a power of sale, service on the beneficiaries is unnecessary (*In re Gooch's Estate*, 3 Ch. D. 742; *In re Hobson's Trusts*, 7 Ch. D. 708).

Payment out:
who should
be served.

Where the fund has been carried to the account of trustees, upon petition for payment out by beneficiaries, it would seem the trustees must be served; but under the present practice the usual tender should be made, and they should not appear merely to consent (see *Re Burnell's Estate*, 12 W. R. 668; 10 Jur. N. S. 289, where costs of appearance were given against the company).

A petition for payment out of a share to which the petitioner is absolutely entitled, should not be served on the owners of other shares (*Re Midland Ry. Co.*, 11 Jur. 1095; *Re East*, 2 W. R. 111).

It would seem that where several persons are entitled to separate shares, these shares need not be dealt with on one petition.

Appearance
where there
are several
shares.

If all the persons entitled employ different solicitors, each may present a separate petition. But if several persons employ one solicitor, only one petition should be presented, unless there is some difficulty or dispute (*In re Clarke's Devises*, 6 W. R. 812; *In re Spooner's Estate*, 1 K. & J. 220; *In re Long's Trust*, 30 L. J. Ch. 620; *Re Nicholl's Trusts*, 14 W. R. 475; 35 L. J. Ch. 516).

Similarly, where there is a large number of persons entitled to shares of the fund, which is to be distributed on one petition, persons who employ separate solicitors are entitled to appear separately; on the other hand, persons employing the same solicitor should appear by one counsel, unless their interests are conflicting (*Re L. & N. W. Ry. Co.'s Act, Ex parte Baroness Braye*, 11 W. R. 333; *Re Long's Estate*, 12 W. R. 460; 10 Jur. N. S. 417).

Where several persons are entitled to a fund in court, unless there is some reason why they should not all join in a petition for transfer of the fund to the account of an administration action, the company will not be compelled to pay the costs of serving a petition as to one share on the others (*Melling v. Bird*, 22 L. J. Ch. 599).

Transfer to
credit of a
cause.

Persons entitled to small rent-charges amply secured need not be served on petition for payment out (*Ex parte Mercers' Co.*, 10 Ch. D. 481).

Incum-
brancers.

If the money is to be paid out either to or with the consent of incumbancers, the company pays two guineas for the incumbancers' costs, and also the costs of an affidavit of service (*In re Halstead United Charities*, 20 Eq. 48; *Ex parte Jones*, 14 Ch. D. 624; overruling *Re Brooke*, 12 W. R. 1128; *In re Yeates*, *In re Lancaster & Carlisle Ry. Co.*, 12 Jur. 279; *Re Hatfield's Estate*, 29 Beav. 370; 32 Beav. 262; *Re Sinclair*, 16 L. T. N. S. 474).

Mortgagees who have obtained a stop order, are entitled to their costs of the stop order and of appearance out of the fund (*In re Jones' Trust Estate*, 39 L. J. Ch. 190; 18 W. R. 312).

The costs of mortgagees whose incumbrances have been created since the fund was paid into court, are not payable by the company (*Re Jones*, 18 W. R. 312; 39 L. J. Ch. 190; *Ex parte G. W. Ry. Co.*, *In re Gough's Trusts*, 24 Ch. D. 569).

In numerous cases, where the property taken has been the subject of an administration suit, instituted either before or after payment into court, upon petitions to transfer the fund to the credit of the cause, it has been held that all the parties to the cause should be served, and that the company must pay the costs of their appearance (*Re Hull & Selby Ry. Co.*, 5 R. C. 458. In *Melling v. Bird*, 17 Jur. 156, costs of defendants appearing were allowed; *Dunning v. Henderson*, 2 De G. & S. 485. In *Patten v. Gatty*, 1 W. R. 219, cited 1 Dr. & S. 491, the suit was instituted after payment in; *Henniker v. Chafy*, 28 Beav. 621).

Property
taken subject
of an action:
petition to
transfer.

It would seem, however, that under the present practice, the parties to the action should not appear in such a case, though they may be served (*Re Picton's Estate*, 3 W. R. 327; *Sidney v. Wilmer*, 31 Beav. 338).

This rule would probably be followed as against *Henniker v. Chafy*, *supra*; and see S. C., 35 Beav. 124, upon application for payment of dividends to tenant for life.

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s. 80. And it would seem that parties to the action should not be served at all (*Eden v. Thompson*, 12 W. R. 789; 2 H. & M. 6).
The practice is not settled. Perhaps the better course may be to serve parties to the action, and to make the usual tender, with a warning to them not to appear.
- Petition to
invest in land. Where the property taken is the subject of an administration suit upon a petition to invest the fund in land, the parties to the suit should be served (*In re Brandon's Estate*, 2 Dr. & S. 162; *Brandon v. B.*; *In re S. E. Ry. Co.*, 32 L. J. Ch. 20; *Haynes v. Barton*, *In re Metr. Ry. Act*, 30 L. J. Ch. 804; 9 W. R. 777; 1 Dr. & S. 483; *Bradshaw v. Fane*, 1 N. R. 159).
In Wilson v. Foster, Re Lanc. & Yorkshire Ry. Co., 26 Beav. 398; 28 L. J. Ch. 410, it was held upon a petition to invest in land that the parties to an administration action should be served but should not appear.
On the other hand, in *Haynes v. Barton*, 9 W. R. 777; 1 Dr. & S. 483, it was held that they were entitled to appear.
- Persons
named in the
account must
be served. Cesser of
liability to
pay costs. Persons whose names appear in the heading of an account which is to be dealt with, must be served (*In re Justices of Coventry*, 19 Beav. 158).
After the fund has been paid to a separate account not in the matter of the Act or the company, the company's liability to costs is at an end (*Brown v. Fenwick*, 14 W. R. 257; *Prescott v. Wood*, 37 L. J. Ch. 691; *Fisher v. Fisher*, 17 Eq. 341).
In such a case, if the company are served, the petition will be dismissed as against them with costs.
But the company remain liable for costs if the fund is transferred to the credit of an action, and the company's name appears in the title of the account, though there is no reference to the Lands Clauses Act or the special Act (*Drake v. Greaves*, 33 Ch. D. 609).
- Adverse liti-
gation. (h) The company are not liable to pay the costs of adverse litigation respecting a fund in court (*Ex parte Cooper, Re North London Ry. Co.*, 13 W. R. 364; 2 Dr. & Sm. 312).
- Adverse
claims before
payment into
court. When the fund is paid in because there are adverse claimants to the land, there is some doubt whether the company is liable for costs.
If the adverse claims can be said to arise because the company take the land, it would seem that they will have to bear the costs (*Ex parte Palmer*, 13 Jur. 781; *In re Butterfield*, 9 W. R. 805; *Re Duke of Norfolk's Estates*, 22 W. R. 817).
On the other hand, if the money is paid in at the request of one of the claimants, and with a view to settle the adverse claims, the company will not have to pay costs (*Re English*, 13 W. R. 932; 11 Jur. N. S. 434, a case in the Court of Appeal. See *Re Mid Kent Ry. Act, Ex parte Styan*, Jo. 387).
- Adverse
claims after
payment in. With regard to litigation between adverse claimants to the fund after it has been paid in, the following points have been decided.
The discussion of a difficult question of construction, if the costs are not thereby increased, is not adverse litigation (*Re Gregson's Trusts*, 2 H. & M. 504; on appeal, 13 W. R. 193; 34 L. J. Ch. 41; *Re Tbokey's Trusts*, 16 Jur. 708).
Nor is the expense of ascertaining who are the persons entitled to the fund caused by adverse litigation, except in so far as affidavits are filed in answer to the claims of some of the parties (*In re Spooner's Estate*, 1 K. & J. 220).
A contest between tenant for life and remainderman, as to their rights to the purchase-money of leasehold property, is not adverse litigation within the section (*Askew v. Woodhead*, 14 Ch. D. 27).
An account between mortgagor and mortgagee is not adverse litigation, and must be borne by the company if necessary to ascertain the proportion in which mortgagor and mortgagee are entitled to the fund (*In re Barcham*, 17 Ch. D. 329).
On the other hand, where a petition for investment, and a separate petition for payment of the dividends is necessary on account of disputes with incumbrancers, the company will not pay the costs of both petitions (*Re Jolliffe*, 3 Jur. N. S. 633).
Where a suit is instituted by an annuitant after the money is paid into court, and the annuitant establishes a charge, the company will not pay the costs of service of the petition upon parties to the suit (*In re Hore's Estate & S. Devon Ry. Co.*, 5 R. C. 692; 14 Jur. 55).
Where a question of title is argued, the company pay only one set of costs, but the parties are entitled to make these the best costs (*Re Mid Kent Ry. Act, Ex parte Styan*, Jo. 387; *Ex parte Yates*, 17 W. R. 872; 20 L. T. N. S. 940; *In re Longworth's Estate*, 1 K. & J. 1).
In simple cases, the costs of adverse litigation, from which the company are relieved, will be specified in the order (*In re Longworth's Estate, supra*).
Where there are adverse claims, unsuccessful claimants must pay costs occasioned by their claims (*Ex parte G. S. & W. Ry. Co.*, 1 R. 11 Eq. 497).
- Costs as be-
tween several
companies. Where funds paid in by several companies are invested in one purchase, the general rule is, that the costs of the *ad valorem* stamp upon the conveyance and the

surveyor's fee will be payable by the companies rateably, according to the value of the sums contributed by them towards the purchase, but the other costs will be payable by the companies in equal proportions (*Ex parte Bishop of London*, 2 D. F. & J. 14; *Ex parte Corp. of London*, 5 Eq. 418).

8 Vict. c. 18,
s. 81.

Great inequalities in the sums paid in will not alter the rule (*Ex parte Goss. of Christ's Hosp.*, 2 H. & M. 166).

The fact that a sum remains uninvested as to which one company is alone liable, will not alter the rule (*Ex parte Trin. Coll. Cambr.*, 18 L. T. N. S. 849; *In re Byron's Estate*, 1 D. J. & S. 358).

Nor will the fact that, there being large and small sums in court, the large sums have been ordered to be first applied to the purchase, leaving a balance of the small sum remaining (*In re Merton Coll.*, 1 D. J. & S. 361. The cases of *Ex parte Christ Church*, 9 W. R. 474; *Ex parte Goss. of St. Bartholomew's Hosp.*, 20 Eq. 369, are not reconcilable with the decisions above cited in the Court of Appeal).

A surveyor may charge a commission on the amount of the purchase-money (*Att.-Gen. v. Drapers' Co.*, 9 Eq. 69).

Similarly, upon a petition for payment out of court, the costs must be borne by the several companies equally, and not in proportion to the sums paid in by the companies (*In re Manchester & Leeds Ry. Co.*, 2 Ch. D. 360).

Where the funds have been paid in by four companies, three of which at the date of the petition have been amalgamated with a fifth company, the fifth company only bears a moiety, and not three-fourths of the costs (*Ex parte Corpus Christi Coll. Oxford*, 13 Eq. 334; *In re Manchester & Leeds Ry. Co.*, *Ex parte Gaskell*, 2 Ch. D. 360; *In re Midl. G. W. Ry. Co.*, 9 L. R. Ir. 16, overruling *In re L. & N. W. Ry. Co.*; *In re Maryport Ry. Act*, 32 Beav. 397).

Where several companies have amalgamated.

Possibly there may be a distinction when one of the companies has made a long lease of its line to another of the companies (*Re Carlisle & Sillith Ry. Co.*, 33 Beav. 253, where one of three companies had leased for 999 years to another of them, and costs were directed to be borne in thirds).

For the usual form of order with regard to costs under this section, see Seton on Decrees (4th edit.), p. 1441; Pemberton on Judgments, p. 577.

It was said in *In re Cant's Estate*, 1 D. F. & J. 153, that the words "except such costs (if any) as are occasioned by litigation between adverse claimants," should not be omitted from the order, unless it is clear that there have been no such costs.

It appears, however, to be the practice not to insert these words, unless it is suggested that litigation has taken place (Seton, 1441).

The company are entitled to have the order made conditional upon the due execution of the conveyance in the petition mentioned (*Ex parte Copley*, 4 Jur. N. S. 297; *Ex parte Eton Coll.*, 7 W. R. 710).

And with respect to the conveyances of lands, be it enacted as follows :

Conveyances.

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot,

Form of conveyances.

§ Vict. c. 18,
s. 82.

and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Statutory
conveyances.

It is, in most cases, not advisable to adopt the statutory conveyances. See the objections to these forms stated in *Frend & Ware, Railway Proc.* 122 (2nd ed.).

Costs of
conveyances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Scale of
costs.

The scale of fees fixed by the orders under the Solicitors' Remuneration Act apply to conveyancing costs of reinvesting the fund (*In re Merchant Taylors' Co.*, 30 Ch. D. 28).

Costs of
conveyance.

The costs of conveyance do not include the costs of ascertaining what is to be conveyed, or of apportioning ground rents. But they include the costs of preparing maps or plans and schedules, and of ascertaining that the maps and schedules are correct (*In re Hampstead Junction Ry., Ex parte Buck*, 1 H. & M. 519; 32 L. J. Ch. 79).

Collateral
agreement.

The costs of a collateral agreement with the vendor relating to the carriage of coals by the company are not costs of conveyance payable under this section (*Re Litch & Keeney*, 16 W. R. 1055).

Conveyance
unnecessary.

The company must pay the costs of the abstract and preparing a conveyance which has become unnecessary owing to the company having proceeded under section 76, if there is no wilful refusal or neglect to convey on the part of the vendor (*In re Crystal Palace Ry. Co., In re Divers*, 1 Jur. N. S. 995).

Costs of
getting in
legal estate.

Where the company contract with an owner in fee, they must pay the costs of getting in an outstanding legal estate, though the legal estate is outstanding at the date of the contract (*Re Nash's Estate*, 4 W. R. 111; *Re Eastern Counties Ry. Co., Ex parte Cave*, 26 L. T. 176). The words "any outstanding terms or interests" seem expressly to meet such a case. *Re S. Wales Co.*, 14 Beav. 418; 20 L. J. Ch. 534, which decides the contrary, has been disapproved by the judge who decided it. See *In re Liverpool Improvement Act*, 5 Eq. 282.

Where leaseholds were bequeathed for life, the surviving executor of the will having died intestate, and the tenant for life agreed to sell to a corporation without contracting to furnish any other title than what he had, the expense of taking out administration *de bonis non* to the testator, which the corporation required to be done, was thrown upon the corporation (*In re Liverpool Improvement Act*, 37 L. J. Ch. 376; 5 Eq. 282).

As to stamping unstamped deeds, see *Ex parte Birkbeck Freehold Land Society*, 24 Ch. D. 119.

Costs of
releasing
mortgage.

Where an owner in fee agrees to sell to a company, and it is found that a small portion of the land is subject to a mortgage, the owner must bear the costs of an application to the court to release the mortgage (*Ex parte Phillips, In re L. & S. W. Ry. Co.*, 32 L. J. Ch. 102; 3 D. J. & S. 341, reversing 2 J. & H. 390; 11 W. R. 54). There is nothing in the section to cover such a case; the vendor is bound, therefore, to bear the costs of completing his own title.

Vendor dying
before com-
pletion.

Under the Conveyancing Act, section 4, if a vendor dies before completing a contract for sale, it can be carried into effect by his representatives.

Costs of pro-
ceedings.

Before this section, if a vendor died before completion, and the legal estate passed to persons unable to convey, a suit or proceedings under the Trustee Acts became necessary to carry out the sale.

In such cases the costs of proceedings necessary to complete the conveyance are not thrown upon the company by this section (*Midland Counties Ry. Co. v. Wescomb*, 2 R. C. 211; *Midland Counties Ry. Co. v. Caldecott*, *ib.* 394; *L. & S. W. Ry. Co. v. Bridger*, 12 W. R. 948; 10 Jur. N. S. 654).

The question as to what costs were payable by the company depended on general principles. The following rules may be deduced from the cases:—

Where the vendor died intestate, no costs were payable on either side (*Hanson v.*

Lake, 2 Y. & C. O. 328; *Hinder v. Streeter*, 10 Hare, 18; *Hodson v. Carter*, 1 N. R. 179; 7 L. T. N. S. 504; *Scott v. Scott*, 11 W. R. 766; overruling on this point *Midland Counties Ry. Co. v. Wescomb*, 2 R. C. 211; *Midland Counties Ry. Co. v. Caldecott*, ib. 394).

8 Vict. c. 18,
s. 83.

Where the vendor died having devised to persons under disability prior to the date of the contract, no costs of a suit were payable on either side (*Murdin v. Patey*, 1 N. R. 566; *Bannerman v. Clarke*, 3 Dr. 632; overruling on this point *Eastern Counties Ry. Co. v. Tufnell*, 3 R. C. 133).

On the other hand, where the vendor devised after the date of the contract, the costs were borne by his estate (*Wortham v. Lord Daere*, 2 K. & J. 437; *Purser v. Darby*, 4 K. & J. 41; *Sanderson v. Chadwick*, 2 N. R. 414; *Williams v. Glenton*, 1 Ch. 201).

In such a case, however, if the completion was postponed for the benefit of both parties, each bore his own costs (*Williams v. Glenton*, *supra*).

The infant heir was entitled to be repaid the costs payable by him out of the purchase-money (*Barker v. Venables*, 11 Jur. N. S. 480).

Costs of
infant heir.

Where a vendor, after having contracted to sell, died, leaving an infant heir or devisee, it appears to be doubtful whether an action was necessary to complete the conveyance, or whether a person could be appointed upon petition under the Trustee Act, 1850, to convey.

In the case of a compulsory sale, it seems the infant was a trustee, since there was no agreement, the validity of which he was entitled to have tried (*Re Russell's Estate*, 12 Jur. N. S. 224; *In re Lowry's Will*, 15 Eq. 78).

In the case of a voluntary purchase, where the contract had been executed by payment of the purchase-money, a petition was sufficient (*In re Cumming*, 5 Ch. 72; *In re Crowe's Mortgage*, 13 Eq. 28).

Where the contract was only executory, it would seem that an action was necessary (*In re Carpenter*, Kay, 418; and *Midland Counties Ry. Co. v. Oswin*, 1 Coll. 74; 3 R. C. 497. *In re Lowry's Will*, 15 Eq. 78, was apparently a case of compulsory purchase).

Acts not incorporating the Lands Clauses Acts, and authorizing the court to throw the expenses of the purchases from time to time made under the Act upon the company, will not throw upon the company the costs of deducing title to the land taken (*In re Strachan & Metropolitan Improvement Acts*, 9 H. 185).

Costs under
special Acts.

In the absence of any special provisions, such costs cannot be charged on *corpus* (*Id.*).

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Taxation
of costs of
conveyances.

The company cannot tax the costs after they have paid (*In re South Eastern Ry. Co.*; *Ex parte Somerville*, 23 Ch. D. 167).

It has been held in Ireland that the costs of persons not parties to the conveyance, such as tenants, cannot be taxed under this section (*Marquis of Drogheda v. Gt. S. & W. Ry. Co.*, 12 Ir. Eq. 103).

Taxation
after pay-
ment.
Persons not
parties to
conveyance.

8 Vict. c. 18,
s. 84.

Taxation
reviewed.

Form of
order for
taxation.

Entry on
lands.

Payment of
price to be
made previous
to entry, ex-
cept to sur-
vey, &c.

Consent to
entry.

What is a
consent.

Tenant's
lien.

What is an
entry.

Rights of un-
paid vendor.

He cannot
bring eject-
ment.

Has a lien
enforceable
by sale.

The court has, under this section, power to review the master's taxation (see *Sandback Trustees v. N. Staffordshire Ry. Co.*, 3 Q. B. D. 1, p. 5).

For the form of order for taxation of costs, see *Pemberton on Judgments*, 578; *Seton*, 4th ed. 1448.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

84. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

If the company enter into possession with the consent of the owners and occupiers, such consent cannot be revoked, and trespass will not lie though the company fail to make compensation (*Doe d. Hudson v. Leeds and Bradford Ry. Co.*, 20 L. J. Q. B. 486; 16 Q. B. 796; *Knapp v. L. C. & D. Ry. Co.*, 11 W. R. 890; 9 Jur. N. S. 671; 32 L. J. Ex. 236; 2 H. & C. 212).

A person who, being ignorant of his rights, takes no measures to prevent the company from entering, cannot be considered to consent to the entry (*Marquis of Salisbury v. Gt. N. Ry. Co.*, 5 C. B. N. S. 174; 28 L. J. C. P. 40).

Where there is a dispute, whether there has been a consent or not, the court will not interfere to stop the works, if perfect justice can be done by compelling the company to pay for the land (*Langford v. Brighton, Lewes & Hastings Ry. Co.*, 4 R. C. 69; and see *Tower v. Eastern Counties Ry. Co.*, 3 R. C. 374; *Fooks v. Wilts, Somerset & Weymouth Ry. Co.*, 5 Hare, 199).

This section does not apply where lands are not taken but merely injuriously affected (*Macey v. Metropolitan Bd. of Works*, 33 L. J. Ch. 377; *Temple Pier Co. v. Metropolitan Bd. of Works*, 13 W. R. 535; 34 L. J. Ch. 262; 11 Jur. N. S. 337).

Where a tenant has, in the event of his tenancy being determined, a lien upon the premises in respect of sums laid out in improvements, the company cannot take the premises without providing for this lien (*Rogers v. Dock Co. at Kingston-upon-Hull*, 13 W. R. 217; 10 Jur. N. S. 1345; 34 L. J. Ch. 165).

Construction of a tunnel under the land and throwing an arch over it are an entry within this section (*Ramsden v. Manchester & Altrincham Ry. Co.*, 5 R. C. 552; 1 Ex. 723; *Pinchin v. Blackwall Ry. Co.*, 1 K. & J. 35).

So is an entry upon the land for the purpose of laying down a highway and dedicating it to the public (*Rangeley v. Midland Ry. Co.*, 37 L. J. Ch. 313; 3 Ch. 306).

Temporary occupation of the land with materials by the consent of the tenant is not an entry (*Standish v. Mayor of Liverpool*, 1 Dr. 1).

The rights of an unpaid vendor against the company are apparently identical, whether his land is taken by agreement or under compulsory powers (see *Walker v. Ware, Hadham & Buntingford Ry. Co.*, 35 L. J. Ch. 94; 1 Eq. 195; *Cosens v. Bognor Ry. Co.*, 36 L. J. Ch. 104; 1 Ch. 594).

He has no right to treat the company as trespassers and to bring ejectment (*Hudson v. Leeds & Bradford Ry. Co.*, 16 Q. B. 796).

But he has a lien upon the land which he can enforce by decree for specific performance and payment within three months or for a sale in default, free from all claim to use the land as a highway (*Walker v. Ware, &c. Ry. Co.*, 1 Eq. 195; *Wing v. Tottenham, &c. Ry. Co.*, 3 Ch. 740; *Munns v. Isle of Wight Ry. Co.*, 5 Ch. 415;

Lyeett v. Stafford & Uttoxeter Ry. Co., 13 Eq. 261. See the form of Order, Pemberton on Judgments, 434, 435; Seton, 4th ed. 1330).

§ Vict. c. 18,
s. 85.

After an order for payment with a declaration of lien, the court will, in default of payment if the land is unsaleable, restrain the company from using the land (*Atwood v. Merrybent Ry. Co.*, 33 Ch. D. 671).

The vendor must establish his lien by an action to which subsequent incumbrancers must be parties (*A.-G. v. Sittingbourne & Sheerness Ry. Co.*, 1 Eq. 636; *Draz v. Somerset & Dorset Ry. Co.*, 38 L. J. Ch. 232; debenture holders who had obtained the appointment of a receiver).

Subsequent incumbrancers must be parties.

Where the purchasing company have leased the line to another company, the lessees ought to be made parties, and a lien will be declared against both companies (*Bishop of Winchester v. Mid-Hants Ry. Co.*, 5 Eq. 17; *Marling v. Stonehouse & Nailsworth Ry. Co.*, 38 L. J. Ch. 306; *Goodford v. same*, *ib.* 307. See *Earl of St. Germans v. Crystal Palace Ry. Co.*, 11 Eq. 668).

Lessees of line should be parties.

If the vendor in an action for specific performance has obtained a decree merely for payment of the purchase-money, with liberty to apply, he cannot apply by petition for a sale, at any rate if there are subsequent incumbrances (*A.-G. v. Sittingbourne & Sheerness Ry. Co.*, 1 Eq. 636).

Whether sale enforced on petition.

But after a decree declaring the vendor's lien, an order for sale within a month has been made on petition (*Williams v. Gt. E. Ry. Co.*, 16 W. R. 821. See, too, *Raper v. Crystal Palace & S. London Ry. Co.*, *ib.* 413).

An unpaid vendor who has given possession to the company, and brings an action for specific performance, is not entitled to an injunction or receiver before he has obtained judgment, though the company admit the amount due (*Pell v. Northampton, &c. Ry. Co.*, 2 Ch. 100; *Latimer v. Aylesbury, &c. Ry. Co.*, 9 Ch. D. 385. The case of *Cosens v. Bognor Ry. Co.*, 1 Ch. 694, appears to be overruled).

Injunction or receiver.

Perhaps an injunction might be granted if the company were destroying the property (*Pell v. Northampton Ry. Co.*, *supra*; and see *Bond v. Hull & Barnsley Ry. Co.*, W. N. 1887, 88).

After an order for sale a receiver will be appointed till the sale, but an injunction will not be granted to restrain the company from using the land (*Munns v. Isle of Wight Ry. Co.*, 5 Ch. 414).

The vendor's lien includes the purchase-money and the compensation assessed, though the award may apportion several sums for each, unless, perhaps, the compensation for injury is the matter of a separate and distinct agreement (*Walker v. Ware, Hadham & Buntingford Ry. Co.*, 1 Eq. 195).

What vendor's lien includes.

It does not include the costs of an arbitration to ascertain the purchase-money (*Earl Ferrers v. Stafford & Uttoxeter Ry. Co.*, 13 Eq. 524).

The vendor does not lose his right to proceed to enforce his lien against the land by a deposit under section 85 of a sum not sufficient to cover the whole purchase-money and compensation assessed (*Walker v. Ware, &c. Ry. Co.*, 1 Eq. 195).

Deposit of insufficient sum.

Where a company took possession of seven acres, and made a deposit under section 85, and subsequently agreed to purchase other land, together with the seven acres, for a fixed sum, the vendor was held entitled to a decree for the sale of all the land, though the deposit made in respect of the seven acres had been paid out to him (*Wing v. Tottenham & Hampstead Junction Ry. Co.*, 3 Ch. 740).

An agreement that the company will pay a fixed sum, or give security if they do not pay, does not destroy the vendor's lien (*Pell v. Midland & S. Wales Ry. Co.*, 17 W. R. 606).

How vendor's lien lost.

In *S. E. Ry. Co. v. L. B. & S. C. Ry. Co.*, 14 W. R. 666, a company which had entered into possession under an agreement to pay the purchase-money upon the final settlement of the purchase, was, upon motion, ordered to pay the money which had been awarded into court.

85. Provided also, that if the promoters of the undertaking shall be desirous (a) of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands (b), it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount (c) of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor (d) appointed by* two justices in the manner hereinbefore provided in the case of parties who

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

* [By Railway Companies Act,

**§ Vict. c. 18,
s. 85.**

1867, 30 & 31
Vict. c. 127,
s. 36, the
Board of
Trade is to
appoint sur-
veyor after
seven days
notice from
company, and
to approve
the sureties.]

cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond (e) under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by* two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-contending party as aforesaid, it shall be lawful for the promoters of the undertaking to enter (f) upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

The provisions of section 63 apply to lands taken under this section (*Adams v. London & Blackwall Ry. Co.*, 2 M.N. & G. 118; 6 R. Ca. 271; 2 H. & T. 286; 19 L. J. Ch. 557).

(a) It has been said that a company can enter under this section only in case there is an urgent necessity for immediate entry (*Field v. Carnarvon & Llanberis Ry. Co.*, 5 Eq. 190). But these remarks are inconsistent with *Willey v. S. E. Ry. Co.*, 6 R. C. 100; *Loosemore v. Tiverton & North Devon Ry. Co.*, 22 Ch. D. 25, 39; 9 App. C. 480).

The company may proceed under this section, after notice of their intention to summon a jury (*Langham v. Gt. N. Ry. Co.*, 1 De G. & S. 486; 5 R. C. 263).

Notice.

The company need not give notice that they are about to proceed under this section; thus, they may obtain the appointment of surveyors *ex parte*, and execute the bond with two sureties, notwithstanding the section requires the sureties to be approved by two justices, in case the parties differ (*Bridges v. Wilts, Somerset & Weymouth Ry. Co.*, 4 R. C. 622; 16 L. J. Ch. 336; *Langham v. Gt. Northern Ry. Co.*, 5 R. C. 263, at p. 265; 1 De G. & S. 486).

Entry with-
out sheriff.

If the landowner gives the company notice that he refuses to allow an entry, the company are not bound to apply to the sheriff under section 91, and they may enter if the landowner does not in fact obstruct them (*Loosemore v. Tiverton & N. Devon Ry. Co.*, 22 Ch. D. 25; 9 App. C. 480).

Power to take
easement.

(b) Where the company are empowered to acquire an easement, they can enter under this section in order to acquire the easement (*Hill v. Midland Ry. Co.*, 21 Ch. D. 143).

What deposit
must include.

(c) The deposit must include both the value of the land and damage for severance (*Field v. Carnarvon & Llanberis Ry. Co.*, 5 Eq. 190).

It does not include the compensation payable under sections 78 and 81 of the Railways Clauses Act in respect of minerals which the landowner is prevented from working (*Ex parte Neath & Brecon Ry. Co.*, 2 Ch. D. 201).

The company can enter upon part of the lands comprised in their notice only after depositing the value of and giving security for the whole (*Barker v. N. Staffordshire Ry. Co.*, 2 De G. & S. 55; 5 R. C. 401).

Value of
easement.

Where the company were empowered to take an easement unless a jury should

determine that it would injure the land, the company need only deposit the value of the easement (*Hill v. Midland Ry. Co.*, 21 Ch. D. 143). 8 Vict. c. 18,
s. 85.

If the company do not give notice to treat for the minerals, and deposit only the value of the land, and remove minerals which it was not necessary to remove for the construction of the works, the company is liable for trespass (*Loosemore v. Tiverton & N. Devon Ry. Co.*, 22 Ch. D. 25; 9 App. C. 480).

Where there is a mortgagee, the company cannot enter without securing the mortgagee (*Ranken v. E. & W. India Docks and Birmingham Junction Ry. Co.*, 12 Beav. 298).

After a counter-notice, under section 92, requiring the company to take the whole of a house, building or manufactory, the company can take possession only upon paying the whole value of the property, including trade fixtures, into the bank (*Underwood v. Bedford & Cambridge Ry. Co.*, 7 Jur. N. S. 941; 31 L. J. Ch. 215; *Giles v. L. C. & D. Ry. Co.*, 1 Dr. & Sm. 406; 30 L. J. Ch. 603; *Gardner v. Charing Cross Ry. Co.*, 2 J. & H. 248; *Gibson v. Hammersmith Ry. Co.*, 11 W. R. 999).

But if the counter-notice is invalid, it may be disregarded (*Loosemore v. Tiverton & N. Devon Ry. Co.*, 9 App. C. 480).

An entry subsequent to the Railway Companies Act, 1867, amending this Act (see margin) cannot be made upon a previous valuation under this Act; therefore an entry after a deposit, made in respect of a valuation made prior to 20th August, 1867, would be irregular, and an injunction to restrain the company from continuing in possession of the land until the proper deposit had been made would be granted (*Field v. Carnarvon & Llanberis Ry. Co.*, L. R. 5 Eq. 190; 37 L. J. Ch. 176).

(d) A proper valuation must be made; mere inspection by a surveyor of the outside of a house is not sufficient (*Cotter v. Metropolitan Ry. Co.*, 12 W. R. 1021).

(e) The fact that the bond was given, and the money paid into court before the date when the award was signed, does not invalidate the proceedings (*Stamps v. Birmingham, Wolverhampton & Stour Valley Ry. Co.*, 7 H. 251, 256).

Sureties are necessary whether the bond be given by the corporation or individual promoters (*Barker v. N. Staffordshire Ry. Co.*, 2 De G. & S. 55).

The lands need not be described in the bond if they are sufficiently identified by prior transactions, or by reference to a plan, or to the name of the occupier (*Willey v. S. E. Ry. Co.*, 1 Mac. & G. 58, 68; *Cotter v. Metr. Ry. Co.*, 12 W. R. 1021; 4 N. R. 455; 10 Jur. N. S. 1014).

A bond to landowners jointly, where they are tenants in common of the land, is bad (*Langham v. Gt. N. Ry. Co.*, 1 De G. & S. 486; *Cotter v. Metr. Ry. Co.*, 12 W. R. 1021).

Where the bond is conditioned for payment to a partial owner, or for deposit in the bank for the benefit of the parties interested, the bond must not be made payable "on demand," or "at any time hereafter" (*Poynder v. Gt. N. Ry. Co.*, 5 R. C. 196; 16 Sim. 3; 2 Ph. 330; *Langham v. Gt. N. Ry. Co.*, 5 R. C. 263; *Cotter v. Metr. Ry. Co.*, 12 W. R. 1021).

The bond must not be conditioned for payment to the party or deposit in the bank, "or otherwise," for the benefit of the parties (*Hosking v. Phillips*, 3 Ex. 168).

The bond may be conditional for payment to the party, his heirs, executors, administrators, or assigns (*Hosking v. Phillips*, 3 Ex. 168).

Where the company is dealing with a particular owner, such as a lessee for the purchase of his interest only, it is sufficient that the condition of the bond be for payment to him, his executors, administrators, and assigns, without mentioning "the parties interested" (*Willey v. S. E. Ry. Co.*, 6 R. C. 100; 1 Mac. & G. 58).

(f) Where the company has entered under a defective bond, the illegality of the entry will be cured, if everything necessary to make the entry legal is subsequently done (*Willey v. S. E. Ry. Co.*, 6 R. C. 100).

The company having given notice to treat within the time limited for exercise of its compulsory powers may enter under this section at any time before the time for completion of the works has expired, whether the works can or can not be completed within that time, and the company may go on to complete the works after the time has expired (*Marguis of Salisbury v. G. N. Ry. Co.*, 17 Q. B. 840; *Loosemore v. Tiverton & N. Devon Ry. Co.*, 22 Ch. D. 25; 9 App. Cas. 480; *Ford v. Plymouth Ry. Co.*, W. N. 1887, 201).

And it follows that the landowner may proceed in such a case, under section 68, to have the price assessed (see *Doe d. Armistead v. N. Staffordshire Ry. Co.*, 16 Q. B. 526).

Five pounds per cent. interest is payable on a sum recovered under section 68 for neglecting to issue the warrant within 21 days (*In re Aberdare Ry. Co.*, 8 W. R. 603).

Where a larger sum is awarded than has been paid in, an order will be made on motion to pay in the rest (*Ashford v. L. C. & D. Ry. Co.*, 14 L. T. N. S. 787). And a similar order has been made on petition (*Ex parte London, Tilbury & Southend Ry. Co.*, 1 W. R. 633).

Effect of counter-notice under s. 92.

Valuation.

Sureties.

Form of bond.

Entry after compulsory power expired.

§ Vict. c. 18,
ss. 86, 87.

Upon deposit
being made
cashier to
give receipt.

86. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

The addition of the name of the company to the title of the account of money paid in does not invalidate the payment in (*Poynder v. Gl. N. Ry. Co.*, 16 Sim. 3).

Deposit to
remain as a
security,
and to be
applied
under the
direction of
the Court.

87. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as herein-before mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Fund paid
out when
condition of
bond satisfied.

As the landowner has no lien on the money deposited for his costs, the fund will be paid out to the company when the condition of the bond has been satisfied (*Ex parte Stevens*, 2 Ph. 772; 2 R. C. 437; *Ex parte Gl. N. Ry. Co.*, 16 Sim. 169; 5 R. C. 269; *Ex parte Neath & Brecon Ry. Co.*, 9 Ch. 263. See *In re Fooks*, 2 Mac. & G. 357).

The fact that the bond is in the possession of the company would appear to be sufficient evidence that the condition of the bond has been performed (*Re L. & N. W. Ry. Co.*, 26 L. T. N. S. 687).

If the condition of the bond is broken, the landowner may apply for payment of the money adversely to the company (*In re Mutlow's Estate*, 10 Ch. D. 131).

As to petitions for payment out of court to a company, see notes to section 70, *ante*, p. 184.

Service of
petition.

Upon petition for payment out of the deposit, the persons whose names appear in the heading of the account should be served, and thirty shillings should be tendered, with an intimation that if they appear they will do so at their own cost (*Ex parte L. & S. W. Ry. Co.*, 38 L. J. Ch. 527).

A person served will, however, be entitled to his costs of appearing, if he is in the position of a trustee, and has not been supplied with any evidence that the purchase-money has been paid till the day before the hearing of the petition (*In re Tottenham & Hampstead Junction Ry. Co.*, 14 W. R. 669).

Service on the vendor has been dispensed with upon proof that the money has been paid and a conveyance executed, and that the costs are discharged (*Ex parte E. Counties Ry. Co.*, 5 R. C. 210; *Ex parte Lanc. & Yorkshire Ry. Co.*, W. N. 1886, 150; *Ex parte Mayor of Huddersfield*; *Re Dyson*, 46 L. T. 730. But this course was

not followed in *Ex parte S. Wales Ry. Co.*, 6 R. C. 151, where the facts were the same; and see *Ex parte L. & N. W. Ry. Co.*, W. N. (1887), 128).

Where the land was not taken, the landowner having filed a bill to restrain the company from entering, the money was paid out (*Re Birmingham, Wolverhampton & Dudley Ry. Co.*, 3 N. R. 290).

Sums paid in by the company to separate credits may be paid out on one petition (*In re Downpatrick, Dundrum & Newcastle Ry. Co.*, I. R. 4 Eq. 497). The more convenient practice would be to present separate petitions, at any rate in cases where it is necessary to serve the persons whose names appear in the heading of the several accounts, as they can hardly be expected for the customary thirty shillings to read a long petition referring to sums paid in to credits with which they have no concern, as well as to the sum standing to their own credit.

8 Vict. c. 18,
ss. 88, 89.

88. If at any time the company be unable, by reason of the closing of the office of the accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said accountant-general's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the accountant-general, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said accountant-general accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

The company may pay the deposit money into the bank by way of security during the time that the office of the accountant-general is closed.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

8 Vict. c. 18,
ss. 90—92.

courts: provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

The right to recover a penalty under this section does not prevent the court from granting an injunction against an improper entry (*Armstrong v. Waterford & Limerick Ry. Co.*, 10 Ir. Eq. 60).

Upon the construction of this section, see *Hutchinson v. Manchester, &c. Ry. Co.*, 15 M. & W. 314; 15 L. J. Ex. 293.

Decision of
justices not
conclusive as
to the right
of the pro-
moters.

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings
in case of
refusal to
deliver pos-
session of
lands.

91. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to
be required to
sell part of a
house.

92. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

A charity, and any person under disability, may claim the benefit of this section (*Governs. of St. Thomas's Hospital v. Charing Cross Ry. Co.*, 1 J. & H. 400; 30 L. J. Ch. 395).

This section is applicable, although the landowner may have only a leasehold interest (*Pulling v. L. C. & D. Ry. Co.*, 33 L. J. Ch. 505).

8 Vict. c. 18,
s. 92.

The owner may require the company to take the whole of a property, though it is held under two demises. Where a house and part of a garden were held under one lease, and the rest of the garden under another, the whole had nevertheless to be taken under this section (*MacGregor v. Metrop. Ry. Co.*, 14 L. T. N. S. 354; *Richards v. Swansea Improvement & Tramway Co.*, 9 Ch. Div. 425).

Property
under differ-
ent leases.

Two adjoining houses, held under separate leases but communicating internally and used as an undivided whole for the purposes of a business, constitute one house within this section (*Seigenberg v. Metr. Dist. Ry. Co.*, 32 W. R. 333; 49 L. T. 554).

Adjoining
houses used
as one.

The fact, that clauses have been introduced in the special Act regulating the construction of the line upon land belonging to a hospital and the speed of trains, does not deprive the hospital of the right to call upon the company to purchase the whole building (*Governs. of Hospital of St. Thomas v. Charing Cross Ry. Co.*, 9 W. R. 411; 7 Jur. N. S. 256; 30 L. J. Ch. 395; 1 J. & H. 400).

A provision in the special Act that such parts of the line as pass through a specified piece of land should be arched over so as to afford the owner a communication between the several portions, is not inconsistent with section 92, so as to disentitle the owner to require the company to take the whole land (*Sparrow v. Oxford, Worcester & Wolverhampton Ry. Co.*, 2 D. M. & G. 94; 21 L. J. Ch. 731).

The owner's right is to require the company to take the whole, and he cannot compel the company to take any portion beyond what they require, less than the whole (*Pulling v. L. C. & D. Ry. Co.*, 33 L. J. Ch. 505).

A counter-notice under this section may be served, although upon receiving a notice to treat for part of a building, the owner sends in a claim for his interest in that part (*Gardner v. Charing Cross Ry. Co.*, 2 J. & H. 248).

A counter-notice under this section need not be in writing (*Binney v. Hammermith Ry. Co.*, 9 Jur. N. S. 773).

Parol notice.

Acceptance by the solicitor of the company of a counter-notice under this section does not bind the company if the notice is bad (*Treadwell v. L. & S. W. Ry. Co.*, 33 W. R. 272; 54 L. J. Ch. 565).

Acceptance
by solicitor.

If the counter-notice requires the company to take any land which they are not bound to take it is bad, and may be disregarded (*Harvie v. South Devon Ry. Co.*, 32 L. T. 1; *Loosemore v. Tiverton & North Devon Ry. Co.*, 22 Ch. D. 25; 9 App. C. 480).

Counter-
notice bad.

Where the owner requires the company to take the whole of his property, he need not specify in his notice whether his claim is in respect of a house or building or manufactory (*Richards v. Swansea Improvement & Tramway Co.*, 9 Ch. D. 425).

What
counter-notice
should
specify.

A piece of land which, at the time of the notice to treat, does not form part of the property, though the owner has a promise of a lease upon determination of prior tenancy, is not part of the property (*Chambers v. L. C. & D. Ry. Co.*, 11 W. R. 479; 1 N. R. 517).

Land not part
of property at
time of notice
to treat.

The word house includes everything that would pass by a conveyance of the house, and to ascertain what would pass the situation and circumstances of the property at the time must be considered (*Lord Grosvenor v. Hampstead Junction Ry. Co.*, 1 De G. & J. 446, 454).

What house
includes.

A strip of garden attached to a house is part of it (*Cole v. West End of London & Crystal Palace Ry. Co.*, 28 L. J. Ch. 767; 5 Jur. N. S. 1114).

An orchard attached to a garden is part of the house (*King v. Wycombe Ry. Co.*, 29 L. J. Ch. 462; 6 Jur. N. S. 239).

So where the company required a strip of a paddock at the back of a house, they were held bound to take the house, garden, and paddock (*Barnes v. Southsea Ry. Co.*, 27 Ch. D. 536).

A series of gardens divided by walls, but connected by a walk passing through the walls, may be all part of the house, though added at different times (*Hewson v. L. & S. W. Ry. Co.*, 8 W. R. 467).

A small piece of land in front of a public-house, treated as passing with it by demise, and necessary for the purpose of vehicles approaching the house, is part of the curtilage (*Marson v. L. C. & D. Ry. Co.*, 6 Eq. 101).

Land in front
of a public-
house.

Where the house is used partly for residence and partly for business, everything necessary to the house so used forms part of it, such as nursery gardens comprised within the same walls (*Salter v. Metrop. District Ry. Co.*, 9 Eq. 432).

House used
for residence
and business.

On the other hand, a market garden has been held not part of a small cottage erected on the boundary of the garden, the whole being used for purposes of trade (*Palkner v. Somerset & Dorset Ry. Co.*, 16 Eq. 458).

Market
garden.

Land upon which, according to the original design, a wing of an institution is to be built, is within the term house (*Grosvenor v. Hampstead Junction Ry. Co.*, 5 W. R. 812; 1 De G. & J. 446).

Land for
additional
wing.

**§ Vict. c. 18,
s. 93.**

Disconnected
buildings.

Unfinished
building.

House and
cottages.

Severed
paddock.

Semi-de-
tached villas
under one
roof.

Manufactory.

Separate
workshops.
Works for
supply of
water.

Trade fix-
tures.

**Intersected
Lands.**

Owners of
intersected
lands may
insist on
sale.

Where all the buildings form part of, and are necessary for the convenience of one institution, it is immaterial that the part taken is not actually continuous with the rest, or that it has only recently been added (*Govern. of the Hospital of St. Thomas v. Charing Cross Ry. Co.*, 9 W. R. 411; 7 Jur. N. S. 256; 30 L. J. Ch. 395; 1 J. & H. 400).

A building covered in and intended for a dwelling-house, is a dwelling-house within the section, and the company cannot take part of the land laid out for a garden without taking the house (*Alexander v. West End & Crystal Palace Ry. Co.*, 30 Beav. 556; 8 Jur. N. S. 833; 31 L. J. Ch. 500).

A house used as a residence and shop, and cottages at the back used for the purpose of storehouses and as a candle manufactory, are all parts of one house which the company can be compelled to take (*Richards v. Swansea Improvement & Tramways Co.*, 9 Ch. D. 425).

The word house does not include a paddock separated from the house by a public road, and let to a yearly tenant (*Fergusson v. L. B. & S. C. Ry. Co.*, 11 W. R. 1088; 2 N. R. 566).

Nor does it include a field used for keeping cows and occasionally for pleasure parties (*Pulling v. L. C. & D. Ry. Co.*, 12 W. R. 770, 969; 10 Jur. N. S. 665; 33 L. J. Ch. 505; *Steele v. Midland Ry. Co.*, 1 Ch. 275).

Two semi-detached villas under one roof, occupied by separate tenants, with a party wall so ineffective that the pulling down of one villa would render the other villa uninhabitable, are, nevertheless, to be considered as separate houses for the purposes of this section (*Harris v. South Devon Ry. Co.*, 23 W. R. 202; 32 L. T. N. S. 1. Reversing the decision of *Malins, V.-C.*, in 31 L. T. N. S. 424).

The place where a dust contractor collects and sorts refuse and rubbish is not a manufactory (*Reddin v. Metrop. Board of Works*, 10 W. R. 764).

Manufactory means producing something new from raw material. It does not include blending teas (*Bennington v. Metrop. Board of Works*, 54 L. T. 837).

Where the manufacture and business are carried on in two distinct houses the company cannot be compelled to take both (*ib.*).

A piece of land included in the same wall with a manufactory, and used for the deposit of ashes and refuse from the manufactory, is part of it (*Sparrow's case*, 2 D. M. & G. 94).

Warehouses separated by a road from the main workshops may nevertheless be part of the same manufactory (*Spackman v. G. W. Ry. Co.*, 1 Jur. N. S. 790).

Where a railway passed over a piece of land and crossed a goit, conveying water from a river to a manufactory, and the company took a mill-house and set of shuttles which regulated the flow of water, and a bridge which crossed the goit above the shuttles, it was held that the goit, mill-house, bridge, and shuttles were part of the manufactory (*Furniss v. Midland Ry. Co.*, 6 Eq. 473).

Where the company are bound under this section to take a manufactory, they are bound to take trade fixtures, though removable by the tenant during his term (*Gibson v. Hammersmith*, 11 W. R. 999).

If the company have power notwithstanding this section to take part of a building, if in the judgment of a jury it can be severed without material detriment, and the owners require the company to take the whole, the warrant to the jury should provide expressly for the determination of this question (*Wood v. G. E. Ry. Co.*, W. N. 1886, 175).

And with respect to small portions of intersected land, be it enacted as follows:

93. If any lands not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left

into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workman-like manner.

8 Vict. c. 18,
ss. 84, 85.

See *post*, section 128, for the meaning of the words "lands not being situate in a town."

If the submission is to include the value of lands required to be taken under this section they should be referred to expressly (*N. Staffordshire Ry. Co. and Wood*, 2 Ex. 244).

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands (a) have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

(a) "Such" lands refer to the land mentioned in the heading to the enactment, i.e., small portions of intersected land (*Falls v. Belfast & Ballymena Ry. Co.*, 12 Ir. L. R. 233; *Eastern Counties Ry. Co. v. Marriage*, 9 H. L. 32; 31 L. J. Ex. 73).

Where lands from which the owner had access to the sea for bathing, fishing, and shooting were severed, it was held, in an Irish case, that the company could not enforce the compulsory sale of the severed land under this section, but might be compelled to make accommodation works under the Railways Clauses Consolidation Act, s. 68, the works being required not merely to connect the two pieces of land, but to enable the claimant to enjoy his rights of bathing, fishing, &c. (*Falls v. Belfast & Ballymena Ry. Co.*, 12 Ir. L. R. 233).

Compulsory sale of severed lands.

This section does not incorporate section 51, a landowner is therefore not entitled to his costs of the inquiry where the company makes no previous offer (*Cobb v. Mid-Wales Ry. Co.*, L. R. 1 Q. B. 342).

And with respect to copyhold lands, be it enacted as follows:

95. Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the

Copyholds.

Conveyance of copyhold lands to be enrolled.

8 Vict. c. 18,
ss. 96, 97.

same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Steward
entitled to
fees on sur-
render.

Upon the enrolment of a conveyance under this section, the steward is only entitled to such fee as would have been payable on a surrender, and not to fees for admittance as well (*Cooper v. Norfolk Ry. Co.*, 3 Ex. 546).

No fine pay-
able.

No fine is payable to the lord upon the execution or enrolment of a conveyance by a copyholder to the company, under this section, and no compensation in respect of such fine can be claimed under section 96 (*Eccles. Commrs. v. L. & S. W. Ry. Co.*, 14 C. B. 743; 23 L. J. C. P. 177).

A railway company proceeding under these sections is not bound by the provisions of the Copyhold Enfranchisement Acts, 1852 and 1858, requiring payment of fines to the lord, as a condition of enfranchisement (*Re Wilson's Estate*, 2 J. & H. 619; 3 D. J. & S. 410).

If, therefore, any sum is paid in respect of such fine, the tenant for life of the manor is not entitled to it, but it must be applied as part of the compensation paid for the inheritance (*In re Wilson's Estate*, 2 J. & H. 619; 3 D. J. & S. 410).

Where copyholds are acquired from a tenant for life, whether directly or through the medium of trustees for the company, the enfranchisement must take place under these sections, and not under the Copyhold Act, 1852 (*In re Marq. of Salisbury and L. & N. W. Ry. Co.*, W. N. 1879, 214).

Copyhold
lands to be
enfranchised.

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

As to the right to a covenant for production of the Court Rolls upon enfranchisement, see *In re Agg-Gardner*, 25 Ch. D. 600.

Lord of the
manor to
enfranchise
on payment
of compensa-
tion.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore pro-

vided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

8 Vict. c. 18,
ss. 98—100.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Apportion-
ment of copy-
hold rents.

And with respect to any such lands being common or waste lands, be it enacted as follows:

Common lands.

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Compensation
for common
lands, where
held of a
manor, &c.
how to be
paid.

The power of dealing with the compensation money under this and the following section is enlarged by the Commonable Rights Compensation Act, 1882 (45 Vict. c. 15), see *post*.

A company, which has purchased land subject to rights of common, is liable to an action by the commoners, if their rights are interfered with before the compensation is assessed and paid (*Stoneham v. London & Brighton Ry. Co.*, L. R. 7 Q. B. 1).

Rights of
commoners.

As to the rights of the various persons interested in the compensation, see *In re Christchurch Inclosure Act*, 35 Ch. D. 355.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have

Lord of the
manor, &c.
to convey to

8 Viet. c. 18,
ss. 101, 102.

the promoters
of the under-
taking, on
receiving
compensation
for his
interest.

been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation
for common
lands where
not held of a
manor, how
to be ascer-
tained.

101. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

This and the following sections are not imperative, so as to exclude agreements entered into otherwise than is provided by these sections (*Dee v. Stafford & Uttoxeter Ry. Co.*, 23 W. R. 868).

A meeting of
the parties
interested to
be convened.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually

affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

8 Vict. c. 18,
ss. 103—107.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Meeting to
appoint a
committee.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

Committee to
agree with
the promoters
of the under-
taking.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

Disputes to
be settled as
in other
cases.

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or, if taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

If no com-
mittee be
appointed,
the amount
to be deter-
mined by a
surveyor.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by an

Upon pay-
ment of com-
pensation
payable to
commoners
the lands to
vest.

8 Vict. c. 18,
s. 108.

order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Distribution
among com-
moners.

The right of the commoners to the compensation, will depend upon the nature of their rights of common interfered with by the company.

Where resident freemen enjoyed from year to year, and only while they resided, the right of putting one beast out to graze on the land, it was held that the money ought to be reinvested in land to be held on the same trusts as the land taken, and the dividends, until investment, divided among the freemen, at the same time in each year as they had been accustomed to enjoy their right of common (*Nash v. Coomes*, 6 Eq. 51).

In another case, where freeholders and copyholders had rights of common regulated by an ancient stint, the money was directed to be divided according to the stint (*Fox v. Amhurst*, 20 Eq. 403).

Occupiers incapable as such of claiming rights of common, are not entitled to any part of the money (*Austin v. Amhurst*, 17 Ch. D. 689).

*Lands in
mortgage.*

Power to
redeem mort-
gages.

And with respect to lands subject to mortgage, be it enacted as follows:

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Mortgagee
not bound.

A mortgagee is not bound by proceedings between the company and the mortgagor to ascertain the compensation for the land, though he may be fully aware of the proceedings (*Martin v. L. C. & D. Ry. Co.*, 1 Ch. 501).

Where the company enter into possession under section 85, and pay a sum into court, and then proceed to have the value of the land ascertained by an inquiry, to which the mortgagees are not parties, the mortgagees have no lien upon the sum paid into court, either in respect of the value of the land, or in respect of plant and fixtures included in their security, but swept away by the works of the company. The mortgagees' right in such a case is, to have a decree for payment of the amount due upon their security, or in default to have an assignment of the land by the company and the landowner (*Martin v. L. C. & D. Ry. Co.*, 1 Ch. 501).

8 Vict. c. 18,
ss. 109, 110.

Where separate sums are assessed for the value of the land, and for loss of profits from the business carried on upon it, the mortgagee of the land is entitled to both sums, the latter sum being in the nature of compensation for the value of the goodwill of the business, which passes with the premises (*Pile v. Pile, Ex parte Lambton*, 3 Ch. D. 36).

Goodwill.

The mortgagee is not entitled to a sum given for trade damage and personal expenses (see *Cooper v. Metr. Board of Works*, 25 Ch. D. 472; *In re South City Market Co., Ex parte Bergin*, 13 L. R. Ir. 245; *Rutter v. Daniel*, 30 W. R. 724).

Personal
damage.

After the money has been paid into court, and invested upon the petition of a tenant for life, it seems the company cannot compel payment of part of it to a mortgagee (*In re Eastern Counties Ry. Co., Ex parte Peyton*, 4 W. R. 380).

If upon a sale to a railway company a mortgagee becomes entitled to six months' interest in lieu of notice, this must be borne by the vendor (*Spencer-Bell to L. & S. W. Ry. Co.*, 33 W. R. 771).

Interest in
lieu of notice.

109. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of
mortgage
money on
refusal to
accept.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender

Sum to be
paid when
mortgage
exceeds the
value of the
lands.

8 Vict. c. 18,
ss. 111, 112.

thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of
money when
refused on
tender.

111. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be
paid where
part only of
mortgaged
lands taken.

112. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee: and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party

entitled to the equity of redemption of the lands comprised in such mortgage deed. 8 Vict. c. 18,
ss. 113, 114.

113. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of monies required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Deposit of
money when
refused on
tender.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

8 Vict. c. 18,
ss. 115—117.

current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

Rent-charges.

And with respect to lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

*Release of
lands from
rent-charges.*

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

*Release of
part of lands
from charge.*

116. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

*Deposit in
case of refusal
to release.*

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

118. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

**8 Vict. c. 18,
ss. 118, 119.**

Charge to
continue on
lands not
taken.

And with respect to lands subject to leases, be it enacted as follows:

Leases.

119. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Where part
only of lands
under lease
taken, the
rent to be
apportioned.

It is the duty of the company, and not of the lessee, to procure the lessor's con-
q 2

8 Vict. c. 18,
ss. 120, 121.

sent to an apportionment of rent under this section (*Slipper v. Tottenham & Hampstead Junction Ry. Co.*, 4 Eq. 112).

Where part only of leasehold premises, subject to an entire single rent, is taken, the arbitrator has no power to apportion the rent. The remedy is under this section (*In re Ware*, 9 Ex. Ch. 295; 7 R. Ca. 780. See also *North British Ry. Co. v. Renton*, 15 Jan. 1864; 2 M.P. 449).

It would seem that the apportioned rent is payable as from the date of the award (*Bull v. Graves*, 18 L. R. Ir. 224).

Tenants to be
compensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensa-
tion to be
made to
tenants at
will, &c.

121. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Section ap-
plies only
where pos-
session is
required.

This section applies only to the case of a tenant who is required to give up possession of the whole or a part of his land before the expiration of his interest (*R. v. Sheriff of Middlesex*, 10 W. R. 717; 31 L. J. Q. B. 261; *R. v. Stone*, L. R. 1 Q. B. 529).

Notice to treat under section 18 is not a requiring possession (*R. v. Stone & Metrop. Ry. Co.*, 7 B. & S. 769; L. R. 1 Q. B. 529).

Where the company have purchased the landlord's interest, they are entitled to give a tenant notice to quit without compensating him (*Syers v. Metrop. Board of Works*, 36 L. T. N. S. 277; see *Ex parte Nadin*, 17 L. J. Ch. 421).

If the company give a notice requiring possession before the determination of the tenancy, the tenant is entitled to compensation, though he may be allowed to occupy till after his tenancy would have determined. The effect of the notice is to convert him into a tenant at sufferance from the date at which the notice expires, and he is entitled to be compensated for the alteration in his interest (*Cranwell v. Mayor of London*, L. R. 5 Ex. 284; explaining, if not overruling *R. v. London & Southampton Ry. Co.*, 10 A. & E. 3; see *R. v. Commrs. of Rochdale Improvement Act*, 2 Jur. N. S. 861).

A person holding under an agreement for a lease for a term exceeding three years, is not a tenant from year to year within this section (*Sweetman v. Metrop. Ry. Co.*, 1 H. & M. 343; 12 W. R. 304; see, too, *In re King's Leasehold Estates*, 16 Eq. 521).

But a lessee for a term, who, at the time when possession is required, has less than a year to run, must proceed under this section (*R. v. G. N. Ry. Co.*, 2 Q. B. D. 151; 46 L. J. Q. B. 4).

Person sub-
ject to dis-
missal at will.

A schoolmaster subject to dismissal by vote of two-thirds of the governors, is tenant at will of the schoolhouse, and is within this section (*Reg. v. Manchester, &c. Ry. Co.*, 4 E. & B. 88; 2 W. R. 591).

Where a notice to treat is given, in determining whether the tenant has a greater interest than as tenant from year to year, his interest at the date of the notice to treat is to be considered (*Tyson v. Mayor of London*, L. R. 7 C. P. 18).

8 Vict. c. 18,
ss. 123—124.

The determination of a magistrate under this section need not be in writing (*In re Combe & L. C. & D. Ry. Co.*, 11 W. R. 441).

It seems a tenant from year to year, giving up possession before the expiration of his tenancy, remains liable to his landlord for the rent up to the end of his tenancy, as he is entitled to compensation for his interest (*Wainwright v. Ramsden*, 5 M. & W. 602).

A landlord has no lien upon the money deposited as compensation for a tenant's interest for arrears of rent (*Ex parte Carey*, 10 L. T. 37).

The determination of the justices under this section need not be in writing (*R. v. Boyce Combe*, 32 L. J. M. C. 67).

This section is incorporated in the Artizans' Dwellings Act, 1875 (*Wilkinson v. Mayor of Birmingham*, 25 Ch. D. 78).

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease to be produced.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act.

Limit of time for compulsory purchase.

Where the special Act limits no time, the period of three years limited by this section applies (*Seymour v. L. & S. W. Ry. Co.*, 33 L. T. 280).

Where a vendor enters into an agreement to sell to a company certain specified land, and any other lands they may require, the agreement is to be limited by the period fixed for completion of the works, and the company may, within that time, acquire fresh lands, though their compulsory powers are at an end (*Rangleley v. Midland Ry. Co.*, 3 Ch. 306; *Kemp v. S. E. Ry. Co.*, 7 Ch. 364).

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Interests omitted to be purchased.

124. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate,

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

8 Vict. c. 18,
ss. 125, 126.

right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

This section applies not only where some partial estate or interest has been omitted to be purchased, but also to lands in which no estate or interest whatever has been purchased where there has been mistake or inadvertence (*Hyde v. Mayor of Manchester*, 5 De G. & S. 249).

Where the company, having notice of equitable mortgages, gave notice to treat to the landowner, and not to the mortgagees, and proceeded to have the purchase-money assessed and paid into court, it was held that the case was not within this section, and that the mortgagees were entitled to a conveyance from the landowner and the company (*Martin v. L. C. & D. Ry. Co.*, 1 Ch. 501; see, too, *Stretton v. G. W. & Brentford Ry. Co.*, 5 Ch. 751).

A person whose claim has not been discovered till after the company has taken possession, but whose title is not disputed, cannot bring an action to recover the land within six months after notice of his claim (*Jolly v. Wimbledon & Dorking Ry. Co.*, 10 W. R. 253; 1 B. & S. 807; 31 L. J. Q. B. 95).

But where the title is disputed, an action will lie to try the question of title, execution being stayed as soon as the right is determined (*Marquis of Salisbury v. G. N. Ry. Co.*, 7 W. R. 75; 5 C. B. N. S. 174).

How value of
such lands to
be estimated.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of
the under-
taking to pay
the costs of
litigation as
to such lands.

126. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or

recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

§ Vict. c. 18,
s. 127.

Full costs are costs between solicitor and client (*Doe d. Hyde v. Mayor of Manchester*, 12 C. B. 474).

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

Sale of superfluous land.

127. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

"Thereof," in the preamble to these sections is to be read as meaning "of the undertaking" (*Gr. W. Ry. Co. v. Way*, L. R. 7 H. L. 283).

A company becoming the owner of land, has not in all respects the same rights over the land as an ordinary proprietor. Its rights are limited by the objects for which the land was acquired, and by its statutory powers.

Rights of companies as landowners.

Thus, a railway company cannot, except in cases expressly provided for by statute, alienate its lands or grant easements over them (*Mulliner v. Midland Ry. Co.*, 11 Ch. D. 611).

Sale of lands.

The Metropolitan District Railway Act, 1868, gives the Metropolitan District Railway Co. unrestricted powers of sale over their lands not actually used for the railway (*Tomlin v. Budd*, 18 Eq. 368).

A company may take steps to prevent a neighbouring landowner from acquiring an easement of light over land used as a goods yard (*Bonner v. G. W. Ry. Co.*, 24 Ch. D. 1; see *Rosenberg v. Cook*, 8 Q. B. D. 162).

Acquisition of easement.

A canal company becoming a riparian proprietor, has the same right as an ordinary riparian proprietor to use the water of the stream for the purposes of its undertaking (*Swindon Waterworks Co. v. Wilts & Berks Canal Navigation Co.*, L. R. 7 H. L. 697).

Rights of company as riparian proprietor.

So a railway company whose line crosses a stream, may take a reasonable quantity of water for the supply of its engines (*Earl of Sandwich v. G. N. Ry. Co.*, 10 Ch. D. 707. See *A.-G. v. G. E. Ry. Co.*, 18 W. R. 1187).

In the same way, a railway company is not liable for diverting subterranean water by operations on its lands (*Galguay v. Gr. S. & W. Ry. Co.*, 4 Ir. C. L. 456).

A landowner may acquire under the Statute of Limitations a title to land purchased by the company, though it may not be superfluous land (*Norton v. L. & N. W. Ry. Co.*, 9 Ch. D. 623; 13 Ch. D. 268; *Bobbett v. S. E. Ry. Co.*, 9 Q. B. D. 424).

Statute of Limitations runs against company.

A landowner has, independently of statute, no right to a reconveyance of his land where the undertaking is abandoned (*Astley v. Manch., Sheffield, & Line. Ry. Co.*, 6 W. R. 561; 2 De G. & J. 453; 27 L. J. Ch. 299, 478; 4 Jur. N. S. 567).

Right to reconveyance of land.

It would seem that in the absence of any express provision, this section would apply to lands not required because the undertaking is abandoned (*Astley v. Manch., Sheffield, & Line. Ry. Co.*, 6 W. R. 561; 2 De G. & J. 453).

But this is not the case where there are express provisions providing for the disposition of the lands taken if the undertaking is abandoned (*Smith v. S. L. R.*, 3 Ex. 282. See the Abandonment of Railways Act, 1860).

This section applies to lands of which the reversion has been acquired by the company subject to a term (*Moody v. Corbett*, L. R. 1 Q. B. 510).

Lands subject to a term.

§ Vict. c. 18,
s. 127.

Under this section the land must be sold without the reservation of any right to the company, such, for instance, as a right in certain events to require a reconveyance (*L. & S. W. Ry. Co. v. Gomm*, 20 Ch. D. 562).

But the company may sell the land subject to restrictions as to the mode of user, for instance, a covenant not to use the land for gasworks or a public-house (*In re Higgins & Hitchman's Contract*, 21 Ch. D. 95).

Where land subject to restrictions as to building is acquired by a company, the restrictions revive if the land is sold by the company as superfluous land (*Bird v. Eggleton*, 29 Ch. D. 1012).

Right to
support.

If the company have not taken the minerals under superfluous land, the purchaser of the land from the company has no right of support as against the owner of the minerals (*Pountney v. Clayton*, 11 Q. B. D. 820).

When
owner's right
arises.

A landowner has no claim to superfluous lands under this section, until the expiration of the time limited, even if the undertaking is abandoned (*Astley v. Manch., Sheffield, and Linc. Ry. Co.*, 6 W. R. 561; 27 L. J. Ch. 478; 4 Jur. N. S. 567; 2 De G. & J. 453).

It has been held that if the company convey away land under this section, which is not in fact superfluous land, a person entitled to a right of pre-emption under section 128 may, before the end of the ten years from the time for completion of the works, have the conveyance set aside, though his right of pre-emption has not yet arisen (*Hobbs v. Midland Ry. Co.*, 20 Ch. D. 418).

Superfluous
lands.

Where the company made a cutting through lands they had purchased, and then covered the cutting by arching it over, it was held that the land thus formed over the arch was not superfluous land within these sections. Land, any portion of which in a vertical section is required, cannot be superfluous land (*In re Metr. District Ry. Co. & Cosh*, 13 Ch. D. 607; *Rosenberg v. Cook*, 8 Q. B. D. 162).

But if superfluous land is divided by a wall from the land retained, and the foundation of the wall below the surface is broader than the wall, the company are not bound to retain the portion of the surface over the foundation of the wall (*Ware v. L. B. & S. C. Ry. Co.*, 31 W. R. 228).

Lands bought
for extra-
ordinary pur-
poses.

It would seem that lands bought for extraordinary purposes under sections 12 and 13, *ante*, and under section 45 of the Railways Clauses Consolidation Act, 1845, are not within this and the following section (*Hooper v. Bourne*, 3 Q. B. D. 258, 281; *City of Glasgow Union Ry. Co. v. Caledonian Ry. Co.*, L. B. 2 H. L. Sc. 160).

Lands, though within the limits of deviation, if acquired by voluntary agreement, after the compulsory powers have expired for extraordinary purposes, stand upon the same footing (*City of Glasgow Union Ry. Co. v. Caledonian Ry. Co.*, *sup.*).

Land included in the plans and books of reference, may be superfluous lands within the section, though acquired by agreement with an absolute owner (*Hooper v. Bourne*, 3 Q. B. D. 258; 5 App. C. 1).

It is clear that lands actually in use upon the last day of the prescribed period, are not superfluous.

Land pur-
chased by
agreement.

The same may be said of lands which, though not in use on that day, are intended to be used within a definite time.

Lastly, lands are not superfluous when, at the end of the period prescribed persons of competent skill can say that, considering the ordinary development of the railway or neighbourhood, they will be required within a reasonable number of years, though it may be impossible exactly to determine the number (*Hooper v. Bourne*, 3 Q. B. D. 258; 5 App. C. 1; *Betts v. G. E. Ry. Co.*, 3 Ex. D. 182; 28 W. R. 50; 49 L. J. Ex. 197, H. L.).

Where adjoining owners do not set up their claims to lands as being superfluous till some time after the prescribed period, the expiration of that period is the time to which the court must look in deciding whether the land is superfluous, but events which have happened subsequently will be admissible in evidence to show what was reasonably to be expected at the end of the period (*G. W. Ry. Co. v. May*, L. R. 7 H. L. 283; *Hooper v. Bourne*, 3 Q. B. D. 258, 287; *Betts v. G. E. Ry. Co.*, 3 Ex. D. 182; affirmed in H. L., 28 W. R. 50; 49 L. J. Ex. 197; and see *North British Ry. Co. v. Moon's Trustees*, 8 Feb. 1879, 6 So. Sess. Ca. (4th Series) 640).

Land which has been acquired for the temporary purpose of depositing soil, and never used for any permanent purpose, is superfluous, there being nothing at the expiration of the fixed period to show that it will be required for any other purpose (*G. W. Ry. Co. v. May*, L. R. 7 H. L. 283).

Strip of land
abandoned.

Where a company allow a strip of land outside their fence to be treated as part of the adjoining field, the lands will be taken to be superfluous (*Norton v. L. & N. W. Ry. Co.*, 13 Ch. D. 268).

It seems land, the drainage from which goes to fill a reservoir used by the company, is not superfluous (*Hooper v. Bourne*, 3 Q. B. D. 258, 279; 5 App. C. 1).

Land adjoining
station.

Small pieces of land adjoining a station can hardly, under ordinary circumstances,

be treated as superfluous (*Betts v. G. E. Ry. Co.*, 3 Ex. D. 182; 28 W. R. 50; 49 L. J. Ex. 197). 8 Vict. c. 18, s. 128.

Where a plot of ground is as a whole needed for the purposes of the railway, an adjoining owner cannot claim small portions of it which happen to be superfluous (*Betts v. G. E. Ry. Co.*, *sup.*).

So, where the land is required for a road, an adjoining owner cannot claim any part before the road is made on the ground that some portions of it will not be wanted for the road (*Betts v. G. E. Ry. Co.*, *sup.*). Land required for road.

Mines under the surface which have been conveyed to the company, not being capable of being acquired under the provisions of the Lands Clauses Consolidation Act or the Railways Clauses Consolidation Act, will not vest in adjoining owners, though the surface may be superfluous (*Hooper v. Bourne*, 3 Q. B. D. 258, 278). Mines under superfluous land.

Where a road adjoins the superfluous lands, and the soil of the road belongs to the lord of the manor, the lord is the adjoining owner, though the grass and herbage arising upon the road may belong to the owner of the close on the side of the road opposite to the superfluous land, under 41 Geo. 3, c. 109, s. 11 (*Hooper v. Bourne*, 3 Q. B. D. 258, 278). Who is the adjoining owner.

The fact that certain persons would have been entitled to the right of pre-emption under section 128, does not make them adjoining owners (*Hooper v. Bourne*, 3 Q. B. D. 258, 278).

Where there are several adjoining properties in contact with the superfluous land, it is to be divided among the owners of the adjoining properties in proportion to the frontage of each, the frontage being the length of the line of contact of each property, if the line were made straight from the point of intersection of the boundaries on one side to the point of intersection of the boundaries on the other side (*Moody v. Corbett*, L. R. 1 Q. B. 510. See, however, *Smith v. S.*, L. R. 3 Ex. 282). Division of superfluous land.

A tenant of the company, or his under-tenant, cannot refuse to give up possession after notice to quit, on the ground that the lands have vested in the adjoining owner under this section (*L. & N. W. Ry. Co. v. West*, 36 L. J. C. P. 245).

Where land bought from a railway company is put up for sale, it is advisable to bind the purchaser to assume that the company had power to sell. Such a condition, if properly framed, is binding (*Best v. Hamand*, 12 Ch. D. 1; *Rosenberg v. Cook*, 8 Q. B. D. 182).

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town (a), or be lands built upon or used for building purposes (b), first offer (c) to sell the same to the person then (d) entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons (e) whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit. Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

(a) Where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living in the same town or place continuously, there may be said to be a town for the purposes of the Act (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610; see *Rex v. Cottle*, 16 Q. B. 412; *Elliott v. S. Devon Ry. Co.*, 2 Ex. 725). Land in a town.

Land within a town means land surrounded by continuous houses, or land covered by continuous houses (*Lord Carington v. Wycombe Ry. Co.*, 3 Ch. 377).

Land is not therefore within a town under this section if it lies outside the range of houses, though within the borough boundary (*Id.*). Land outside range of houses.

(b) "Land used for building purposes" does not mean "building land" in the ordinary sense, or land suitable for building. It means land used for the purposes of adjoining land already built over, whether for recreation, as gardens, &c., of building purposes. Land used for building purposes.

8 Vict. c. 18,
ss. 129, 130.

Right of pre-emption.

or for depositing building materials (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610).

(c) Where the company have declared the lands to be superfluous, as, for instance, by putting them up for sale as surplus lands, or by conveying them to a third person, the right of pre-emption arises whether the ten years limited by section 127 have expired or not (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610; *Carington v. Wycombe Ry. Co.*, 3 Ch. 377).

So where the company apply the land to purposes not authorized by their Act, the right of pre-emption arises (*Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745).

Applying the land taken to a different undertaking under powers subsequently acquired, is not a disposing of the land within the section (*Aspley v. Manch., Sheffield, & Linc. Ry. Co.*, 6 W. R. 561; 27 L. J. Ch. 478; 4 Jur. N. S. 567; 2 De G. & J. 453).

Lands taken for particular works, and afterwards used for accommodation works within sections 16 and 68 of the Railways Clauses Act, are not superfluous within the meaning of the section (*Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745).

(d) The terms of the special Act may limit the option to the person or persons of whom the lands in question were purchased (*Highgate Archway Co. v. Jeakes*, 12 Eq. 9).

Who entitled to pre-emption.

Lessees are entitled to the right of pre-emption under this section (*Coventry v. L. B. & S. C. Ry. Co.*, 5 Eq. 104).

(e) The words "persons whose lands shall immediately adjoin the lands to be sold," may possibly admit of a larger construction than the similar words under section 127, inasmuch as the adjoining owner under this section gives consideration, whereas under the former section the lands vest in the "adjoining" owner without more.

Thus it has been held that persons between whose land and the superfluous land a private road intervened, the soil of which was vested in a third person, were nevertheless entitled to the pre-emption given by this section (*Coventry v. L. B. & S. C. Ry. Co.*, 5 Eq. 104; *Hobbs v. Midl. Ry. Co.*, 20 Ch. D. 418).

Where a strip of land, of which the company and a landowner are joint owners, intervenes between the superfluous land and the land of the landowner, he is an adjoining owner (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610).

Where there may be more than one adjoining owner entitled to pre-emption, the court will direct an inquiry (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610).

Right of pre-emption to be claimed within six weeks.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

131. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

8 Vict. c. 18,
ss. 131, 132.

Lands to be
conveyed to
the pur-
chasers.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

Effect of the
word "grant"
in convey-
ances.

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such

8 Vict. c. 18,
ss. 133, 134.

conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land tax and
poor's rate to
be made good.

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

This section only makes the company liable to pay the deficiency in the rates arising from their possession of lands; it does not make them liable to be rated in respect of such lands where they would not otherwise be so liable (*Mayor of London v. St. Andrew, Holborn*, L. R. 2 C. P. 574).

Municipal
bodies pay de-
ficiency rate.

Persons having no pecuniary interest in the works or undertaking, such as the Metropolitan Board of Works, are liable to a deficiency rate within this section (*Wheeler v. Metr. Board of Works*, L. R. 4 Ex. 303; *Stratton v. Metr. Board of Works*, L. R. 10 C. P. 76).

The deficiency rate is payable, though the nature of the works is such that when finished they would not be liable to poor rates (*Stratton v. Metr. Board of Works*, L. R. 10 C. P. 76).

No deficiency rate is payable on property which at the time when it was taken was not liable to be assessed (*Stratton v. Metr. Board of Works*, L. R. 10 C. P. 76).

As soon as the whole of the line which runs through a particular parish is completed, so as to be capable of being rated, the liability to pay the deficiency rate ceases, though other parts of the line in other parishes are unfinished (*E. London Ry. Co.*, L. R. 7 H. L. 81, overruling *Reg. v. Metr. District Ry. Co.*, L. R. 6 Q. B. 698).

And it seems the liability to the deficiency rate would cease as soon as a portion of the line in a particular parish is complete and worked as a railway, though other portions in the same parish might not be finished (*Whitechurch v. E. London Ry. Co.*, L. R. 7 Ex. 248, 254, per Bramwell, B.).

Where the special Act directed that a certificate signed by the chairman should be conclusive evidence of the completion of the works, it was held that the deficiency rate was payable up to the date of the certificate, but not afterwards, though certain lands which had been taken but were not required, remained unbuilt upon (*Stratton v. Metr. Board of Works*, L. R. 10 C. P. 76).

As soon as any buildings are erected and assessed, or liable to be assessed, the rateable value of such buildings must be credited against the deficiency rate (*Stratton v. Metr. Board of Works*, L. R. 10 C. P. 76).

As to when the works are to be considered completed in the case of improvements by a sanitary authority, see *Governor of Poor of Bristol v. Mayor of Bristol*, 18 Q. B. D. 549.

Service of
notices upon
company.

134. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the

principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

8 Vict. c. 18,
ss. 135, 136.

See the notes to section 135 of the Companies Clauses Act, *ante*.

This section apparently applies in all cases where a summons or notice is required for any purpose (*In re S. Yorkshire, Doncaster & Goole Ry. Co., Ex parte Senior*, 18 L. J. Q. B. 333).

Order IX. rule 8, of the Rules of the Supreme Court, 1883, leaves these statutory directions unaffected.

Service of a writ on a booking-clerk of a Scotch railway company at a station on an English line over which the Scotch company had running powers, has been held insufficient (*Mackareth v. Glasgow & S. W. Ry. Co.*, L. R. 8 Ex. 149).

The principal office is the head office for the whole line, and not an office for a traffic station (*Garton v. Gt. W. Ry. Co.*, E. B. & E. 837; 27 L. J. Q. B. 375, where Paddington, and not Bristol, was held to be the principal office of the Great Western Railway).

What is principal office.

But service on the head officer of a foreign corporation, carrying on business in England, at its chief place of business there has been held good (*Newby v. Von Oppen*, L. R. 7 Q. B. 293. See, too, *Scott v. Royal Wax Candle Co.*, 1 Q. B. D. 404).

Service on the secretary need not, it seems, be made at the office (*Wilson v. Caledonian Ry. Co.*, 5 Ex. 822; 20 L. J. Ex. 7; 6 R. C. 772. See *Evans v. Dublin & Drogheda Ry. Co.*, 14 M. & W. 142; 14 L. J. Ex. 245; 3 R. C. 760).

Upon the construction of the County Courts Act (9 & 10 Vict. c. 95), s. 60, conferring jurisdiction on County Courts to issue a summons "in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought," it has been held that a railway company dwells at the place where it carries on its business, and that the place where such a body carries on business is where it carries on its general business, not where it carries on a part or even a material part of its business (*Brown v. L. & N. W. Ry. Co.*, 4 B. & S. 326; *Adams v. Gt. W. Ry. Co.*, 30 L. J. Ex. 124).

Where a railway "dwells."

Thus the company cannot be said to carry on its business at the receiving house of one of its agents (*Minor v. L. & N. W. Ry. Co.*, 1 C. B. N. S. 325; 26 L. J. C. P. 39).

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceeding shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Recovery of penalties.

136. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be

Penalties to be summarily recovered before two justices.

[Repealed as regards England from "and on com-

8 Vict. c. 18,
ss. 137—140.

plaint" to end
of section
(47 & 48 Vict.
c. 43).]

served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to
be levied by
distress.

[*Repealed as
regards Eng-
land* (47 & 48
Vict. c. 43).]

Distress, how
to be levied.

137. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application
of penalties.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein in aid of the poor's rate of any adjoining parish or district.

As to the application of penalties, see *Receiver for Metropolitan Police District v. Bell*, L. R. 7 Q. B. 433.

Distress
against the
treasurer.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of

such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

§ Vict. c. 18,
ss. 141—144.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not
unlawful for
want of form.

142. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to
be sued for
within six
months.

[Repealed as
regards Eng-
land (47 & 48
Vict. c. 43).]

A similar limitation as to time is contained in section 11 of Jervis's Act (11 & 12 Vict. c. 43), upon the construction of which, see *Morant v. Taylor*, 1 Ex. D. 188; *Coggins v. Bennett*, 2 C. P. D. 568.

The day on which the offence is committed is, it seems, to be excluded from the computation of the six months (see *Lester v. Garland*, 15 Ves. 248; *Hardy v. Ryle*, 9 B. & C. 603).

143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on
witnesses
making
default.

This section is repealed, as regards England, by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), so far as relates to any matter to which the Summary Jurisdiction Acts apply. Section 144 is repealed by the same Act.

144. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this Act annexed.

Form of
conviction.

[Repealed as
regards Eng-
land (47 & 48
Vict. c. 43).]

8 Vict. c. 18,
ss. 145—147.

Proceedings
not to be
quashed for
want of form.

Certiorari lies
where no
jurisdiction or
jurisdiction
exceeded.

Excess of
jurisdiction
may be shown
by affidavit.

Whether part
of verdict
may stand.

Parties
allowed to
appeal to
quarter ses-
sions on giv-
ing security.
[*Repealed as
regards Eng-
land from "for
the county" to
end of section
(47 & 48 Vict.
c. 43).*]

Court to make
such order as
they think
reasonable.

145. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

An inquisition is a "proceeding" within this section (*R. v. Sheffield Ry. Co.*, 11 A. & E. 194, 202, n.; *R. v. Justices of Lindsey*, 14 L. J. M. C. 161; 3 D. & L. 101).

Notwithstanding this section, an inquisition may be brought up to be quashed by writ of *certiorari*, where there is no jurisdiction or the jurisdiction has been exceeded.

If, for instance, the presiding officer is interested, being a shareholder in the company (*R. v. L. & N. W. Ry. Co.*, 12 W. R. 208. See too *Re Edmundson*, 17 Q. B. 67; *R. v. Commrs. of Cheltenham*, 1 Q. B. 467; *R. v. Aberdare Canal Co.*, 14 Q. B. 854).

If after notice that the sheriff is a shareholder in the company the landowner proceeds without objection, he will be held to have waived the objection (*Ex parte Baddely*, 5 D. & L. 575; 5 R. C. 542).

Upon the question of disqualifying interest, see the C. C. C. Act, 1845, s. 3, and notes, *ante*.

So the inquisition may be removed if compensation is awarded for several claims, some of which are bad (*In re Penny & S. E. Ry. Co.*, 26 L. J. Q. B. 223; 7 E. & B. 660; *R. v. Clerk of Peace of County of Chester*, 12 W. R. 762).

Excess of jurisdiction may be shown by affidavit, though it may not appear on the face of the proceedings (*Re Penny*, 7 E. & B. 660).

Where a clerk of the sheriff, assisted by a barrister, both of whom had been appointed his deputies by the sheriff, presided, and the sheriff returned the verdict and judgment purporting to have been taken and delivered by himself to the clerk of the peace, it was held under an Act containing a provision similar to this section that the proceedings could not be removed by *certiorari* (*R. v. Sheffield Ashton-under-Lyne & Manchester Ry. Co.*, 1 R. C. 537; 11 A. & E. 194).

Where the verdict is for separate sums, some of which the jury have no jurisdiction to award, it would seem that the whole verdict must be quashed, unless the parties agree to let it stand for the unobjectionable parts (*R. v. S. Wales Ry. Co.*, 13 Q. B. 988).

Applications for a writ of *certiorari* should be promptly made. As a general rule, they should be made within the time allowed for settling an award made under the Act (*R. v. Sheward*, 5 Q. B. D. 179; 9 Q. B. D. 741).

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid

by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

8 Vict. c. 18,
ss. 148—150.

148. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present majesty, intituled, "An Act for Regulating the Police Courts in the Metropolis," and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Receiver of
the metro-
politan police
district to
receive penal-
ties incurred
within his
district.

2 & 3 Vict.
c. 71.

149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons
giving false
evidence
liable to
penalties of
perjury.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:

*Access to
special Act.*

150. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act so printed as aforesaid; and

Copies of
special Act to
be kept and
deposited, and
allowed to be
inspected.

8 Vict. c. 18,
ss. 151—153.

the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present majesty, intituled “An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.”

Penalty on
company fail-
ing to keep or
deposit.

151. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to
extend to
Scotland.

152. And be it enacted, that this Act shall not extend to Scotland.

Act may be
amended this
session.

153. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of parliament.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.).

Form of Conveyance.

I of in consideration of the sum of paid to me [*or, as the case may be*, into the Bank of England *or* Bank of Ireland, in the name and with the privy of the accountant-general of the Court of Chancery, ex parte “the promoters of the undertaking” (*naming them*), *or* to *A.B.* of and *C.D.* of two trustees appointed to receive the same], pursuant to the [*here name the special Act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or constituted*] by the said Act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the
day of in the year of our Lord .

SCHEDULE (B.).

Schedules.

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or constituted*] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or half-yearly, as agreed upon,*] portions, henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord

SCHEDULE (C.).

Form of Conviction.

to wit.

BE it remembered, that on the day of in the year of our Lord A.B. is convicted before us C., D., two of her majesty's justices of the peace for the county of [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special Act*]. Given under our hands and seals, the day and year first above written.

C., D.

Repealed as regards England, 47 & 48 Vict. c. 43.

§ Vict. c. 18,
ss. 129, 130.

Right of pre-emption.

or for depositing building materials (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610).

(c) Where the company have declared the lands to be superfluous, as, for instance, by putting them up for sale as surplus lands, or by conveying them to a third person, the right of pre-emption arises whether the ten years limited by section 127 have expired or not (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610; *Carington v. Wycombe Ry. Co.*, 3 Ch. 377).

So where the company apply the land to purposes not authorized by their Act, the right of pre-emption arises (*Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745).

Applying the land taken to a different undertaking under powers subsequently acquired, is not a disposing of the land within the section (*Asiley v. Manch., Sheffield, & Linc. Ry. Co.*, 6 W. R. 561; 27 L. J. Ch. 478; 4 Jur. N. S. 567; 2 De G. & J. 453).

Lands taken for particular works, and afterwards used for accommodation works within sections 16 and 68 of the Railways Clauses Act, are not superfluous within the meaning of the section (*Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745).

(d) The terms of the special Act may limit the option to the person or persons of whom the lands in question were purchased (*Highgate Archway Co. v. Jeakes*, 12 Eq. 9).

Who entitled to pre-emption.

Lessees are entitled to the right of pre-emption under this section (*Coventry v. L. B. & S. C. Ry. Co.*, 5 Eq. 104).

(e) The words "persons whose lands shall immediately adjoin the lands to be sold," may possibly admit of a larger construction than the similar words under section 127, inasmuch as the adjoining owner under this section gives consideration, whereas under the former section the lands vest in the "adjoining" owner without more.

Thus it has been held that persons between whose land and the superfluous land a private road intervened, the soil of which was vested in a third person, were nevertheless entitled to the pre-emption given by this section (*Coventry v. L. B. & S. C. Ry. Co.*, 5 Eq. 104; *Hobbs v. Midl. Ry. Co.*, 20 Ch. D. 418).

Where a strip of land, of which the company and a landowner are joint owners, intervenes between the superfluous land and the land of the landowner, he is an adjoining owner (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610).

Where there may be more than one adjoining owner entitled to pre-emption, the court will direct an inquiry (*L. & S. W. Ry. Co. v. Blackmore*, L. R. 4 H. L. 610).

Right of pre-emption to be claimed within six weeks.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

131. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

8 Vict. c. 18,
ss. 131, 132.

Lands to be
conveyed to
the pur-
chasers.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

Effect of the
word "grant"
in convey-
ances.

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such

8 Vict. c. 20,
s. 3.

- the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:
- “Justice;” The word “justice” shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested (b) in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression “two justices” shall be understood to mean two justices assembled and acting together:
- “Owner;” Where under the provisions of this or the special Act any notice shall be required to be given to the owner of any lands, or where any Act shall be authorized or required to be done with the consent of any such owner, the word “owner” shall be understood to mean any person or corporation who, under the provisions of this or the special Act, or any Act incorporated therewith, would be enabled to sell and convey lands to the company:
- “the company;” The expression “the company” (c) shall mean the company or party which shall be authorized by the special Act to construct the railway:
- “the railway;” The expression “the railway” (d) shall mean the railway and works by the special Act authorized to be constructed:
- “Board of Trade;” The expression “the Board of Trade” shall mean the lords of the committee of Her Majesty’s Privy Council appointed for trade and foreign plantations:
- “the bank;” The expression “the bank” shall mean the Bank of England, where the same shall relate to monies to be paid or deposited in respect of lands situate in England; and shall mean the bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland:
- “turnpike road,” Ireland; The expression “turnpike road” shall, when applied to any road in Ireland, include any road upon which her majesty’s mails are or shall be carried in mail carriages; or such other roads as the commissioners of public works in Ireland shall consider to require arches of greater width or height than by this Act is required for public carriage roads:
- “Surveyor,” Ireland; The expression “surveyor,” applied to a road or highway, shall, as to railways in Ireland, include the county surveyor:

The expression "overseers of the poor," when applied to Ireland, shall include the poor law guardians of the electoral division and the clerk of the guardians of the union through which such railway may pass.

8 Vict. c. 20,
ss. 4, 5.

"Overseers of
the poor,"
Ireland.

Tolls.

(a) This section "does not in any way limit or restrain the construction of the word tolls; it does not assume to define it; it merely specifies certain payments, which it shall be held to include, even if *per se* they could not be brought within the correct definition of it. Further, it is necessary to extend the construction beyond the strict technical meaning of toll *per se*, for toll *per se*, without the addition of through, or traverse, or some adjunct applying it to the passage of goods or passengers, would be simply unsuitable with reference to a railway. It must clearly then mean at least a payment the consideration of which is the passage of passengers, carriages, or goods, on the railway" (*Gt. N. Ry. Co. v. S. Yorkshire Ry. Co.*, 2 Exch. 642, at p. 644).

As to the meaning of the word "toll," when used in sections 90 and 97, see notes to these sections, *post*.

(b) As to disqualifying interest, see notes to Companies Clauses Act, 1845, s. 3, *ante*.

(c) The word "company" is interpreted in the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 3, and in the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 2. The expression "railway company" is defined in the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 32), s. 1, and in the Regulation of Railways Act (36 & 37 Vict. c. 48), s. 3.

The company.

(d) The Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 2, makes the word "railway" mean, the whole or any portion of a railway or tramway, whether worked by steam or otherwise.

The railway.

In the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 32, s. 1), it was enacted that the word railway "shall include every station of or belonging to such railway used for the purposes of public traffic"; but this definition was extended by the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48, s. 3), by which the term is made to include "every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic."

Under the Public Health Act, 1848, the Local Government Act, 1858, and again in the Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 211), the occupier of any land used "as a railway constructed under the power of any Act of Parliament for public conveyance," is to be assessed in respect of the general district rate, "in the proportion of one-fourth part only of the net annual value thereof." "The railway," as used in these Acts, means only the line of railway, including the sidings, turntables, and platforms, but does not include stations, warehouses, and buildings auxiliary to and necessary for the working of the railway (*S. Wales Ry. Co. v. Swansea Local Board*, 4 E. & B. 189; 24 L. J. M. C. 30).

"The term 'railway,' by itself, includes all works authorized to be constructed," and therefore includes stations (*Cotter v. Midland Ry. Co.*, 5 R. C. 187, at p. 194).

As to what the word "railway" includes, see *Adamson v. Edinburgh & Glasgow Ry. Co.*, 2 Macq. 331, at 336).

And see what is "railway" and what is station for rating purposes (*L. & N. W. Ry. Co. v. Wigan Union*, 2 Nev. & Mac. 240).

"Railway," under section 92, which enables the public to use the railway upon the payment of tolls, does not include stations (*Midland Ry. Co. v. Ambergate Ry. Co.*, 10 Hare, 359. And see a case which still further restricted this right, *Powell Duffryn Steam Coal Co. v. Taff Vale Ry. Co.*, 43 L. J. Ch. 576).

4. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "the Railways Clauses Consolidation Act, 1845."

Short title of
the Act.

5. And whereas it may be convenient, in some cases, to incorporate with Acts hereafter to be passed some portion only of the provisions of this Act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter

Form in
which por-
tions of this
Act may be
incorporated
in other Acts.

3 Vict. c. 20,
s. 6.

as it is described in this Act, in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or accepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

On the subject of incorporation, see notes to L. C. C. Act, 1845, ss. 1, 5 and 80.

*Construction
of railway.*

The construction of the railway to be subject to the provisions of this Act and the Lands Clauses Consolidation Act.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows:

6. In exercising the power (a) given to the company by the special Act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands (b) taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation (c) for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

*Exercise of
compulsory
powers.*

(a) Acts empowering companies to make railways are enabling, merely, and not obligatory, and therefore railway companies cannot be compelled to issue notices to treat to landowners, or to put in force their compulsory powers (*York & N. Midland Ry. Co. v. Reg.*, 22 L. J. Q. B. 225; 1 E. & B. 868; *Edinburgh, Perth & Dundee Ry. Co. v. Philip*, 2 Macq. 514; *Scottish N. E. Ry. Co. v. Stewart*, 3 Macq. 382).

And the case is not altered by the fact that the line has been in part completed (*York & N. Midland Ry. Co. v. Reg.*, *supra*. See *R. v. French*, 3 Q. B. D. 187; 4 *ib.* 507).

Where a company are authorized to make a line from A. to B., with a diverging line to C., the Attorney-General cannot apply for an injunction to restrain the company from opening the line from A. to B. except with the intention of completing the diverging line (*A.-G. v. Birmingham & Oxford Junction Ry. Co.*, 3 M'N. & G. 453).

*Application
of funds to
part only of
undertaking.*

The position of a shareholder, however, is different, and when he has advanced his money with a view to one entire undertaking, it seems he would be entitled to restrain the company from applying the funds in completing a part only of the line with a view to abandon the rest (*Cohen v. Wilkinson*, 1 H. & T. 554; 1 Mac. & G. 481; 18 L. J. Ch. 411; *Graham v. Birkenhead, Lancashire & Cheshire Junction Ry. Co.*, 20 L. J. Ch. 445. See *Brown v. Monmouthshire Ry. & Canal Co.*, *ib.* 497; 13 Beav. 32. And see *Carlisle v. S. E. Ry. Co.*, 6 R. C. 470).

Where there was a clause in the special Act prohibiting the opening of a main line until a junction line was opened, the court refused to enforce the clause by

injunction, where the company gave an undertaking to complete the junction line with all practicable diligence (*Cromford & High Peak Ry. Co. v. Stockport, Disley, &c. Ry. Co.*, 1 De G. & J. 326).

8 Vict. c. 20,
ss. 7, 8.

(b) The word "lands" in this section includes mines, and all persons interested in mines must be compensated for their interest in the manner provided by the Lands Clauses Consolidation Act (*Smith v. Gt. W. Ry. Co.*, 3 App. Ca. 165).

(c) For the cases upon compensation recoverable, see *ante*, L. C. C. Act, ss. 49, 63, and 68, and notes.

It has been held that under this section and section 16, where a house is taken or injuriously affected, compensation may be given to the owner of the house for injury to his goods in the house (*Knock v. Metr. Board of Works*, L. R. 4 C. P. 131, *sed qu.*).

This section does not apply to a case, where the company, having given notice to treat for land only, afterwards enter under section 85 of the Lands Clauses Act, and remove minerals which it is not necessary to remove for the construction of the works. In such a case the owner may bring an action for trespass (*Loosemore v. Tiverton & N. Devon. Ry. Co.*, 22 Ch. D. 25; 9 App. C. 480).

7. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special Act, or in the schedule to the special Act, it shall be lawful for the company, after giving ten days notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, mis-statement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

Errors and omissions in plans to be corrected.

This section is intended to apply to cases of mistake in the acreage, or the names of the owners, clerical errors, and the like, and does not compel the company to correct their book of reference so as to make the description of owners, lessees, and occupiers full and accurate before they can exercise their compulsory powers (*Kemp v. W. E. of London & Crystal Palace Ry. Co.*, 1 K. & J. 681).

As to the importance of the deposited plans, see *ante*, notes to the L. C. C. Act, 1845, s. 6, *ante*.

8. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by parliament, on

Works not to be proceeded with until plans of all alterations authorized by Parliament have been deposited.

8 Vict. c. 20,
ss. 9—11.

the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorized to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

There is nothing in this or any other section of this Act requiring the plans to show cross sections (*R. v. Caledonian Ry. Co.*, 16 Q. B. 19).

As to the plans, see *ante*, notes to L. C. C. Act, 1845, s. 6.

Clerks of the
peace, &c. to
receive plans
of alterations,
and allow
inspection.

9. The said clerks of the peace, parish clerks, and postmaster shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of her present majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament."

7 Will. 4 &
1 Vict. c. 83.

Copies of
plans, &c. to
be evidence.

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Limiting de-
viation from
datum line
described on
sections, &c.

[See 26 & 27
Vict. c. 92,
s. 4.]

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas works, or waterworks affected by such deviation: provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such

Proviso.

consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty session to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

8 Vict. c. 20,
ss. 12, 13.

Proviso.

Where a company made an embankment more than five feet above the level, having obtained the consent contemplated by this section, but without giving the notice required by section 12, an injunction would have been granted to restrain them proceeding with the embankment, but they were in fact put under terms to take the opinion of the Board of Trade and abide the order of the court after that Board should have given their decision (*Pearse v. Wycombe Ry. Co.*, 1 Drew. 244).

12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Public notice to be given previous to making greater deviations.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

13. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Arches, tunnels, &c. to be made as marked on deposited plans.

[Amended
26 & 27 Vict.
c. 92, s. 4.]

Where the special Act confers powers of stopping up the streets within a certain area, the special Act must be considered to overrule this section, though according to the plans the line was intended to be carried on an arch over one of the streets

8 Vict. c. 20,
ss. 14, 15.

Deviation in
case of arches.

within the area (*A.-G. v. Gl. E. Ry. Co.*, 7 Ch. 475; L. R. 6 H. L. 367. See, too, *Temple v. Flower*, 41 L. J. Ch. 604).

Under this section, arches must be made according to the plans, both as regards situation and as regards mode of erection, dimensions, &c., if stated in the plan (*Little v. Newport, Abergavenny & Hereford Ry. Co.*, 12 C. B. 752; *A.-G. v. Teckesbury & Malvern Ry. Co.*, 1 D. J. & S. 423; 32 L. J. Ch. 482).

The power of deviation allowed by section 15 does not apply in the case of tunnels or viaducts shown on the plan (*Little v. Newport, &c. Ry. Co.*, 12 C. B. 752).

In consequence of these decisions, it was provided by the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92, s. 4), which applies to railways authorized by Acts incorporating it, that the company might deviate from the line or level of any arch, tunnel, or viaduct, subject to the limitations contained in sections 11, 12, and 15, and might, with the consent of the Board of Trade, substitute any engineering work not shown on the plans for an arch, tunnel, or viaduct shown thereon.

Limiting deviations from
gradients,
curves, &c.

14. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions; (that is to say.)

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade.

Collateral
works.

This section applies only to works on the line of railway itself, and not to collateral works, such as cross-roads or bridges, for carrying roads over the line (*Beardmer v. L. & N. W. Ry. Co.*, 1 Mac. & G. 112; 1 H. & T. 161; 18 L. J. Ch. 432; *R. v. Caledonian Ry. Co.*, 16 Q. B. 19, p. 31).

Engineering works under this section include bridges (*A.-G. v. Teckesbury & Malvern Ry. Co.*, 1 D. J. & S. 423; 32 L. J. Ch. 482).

Lateral deviations.

15. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards

from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special Act provided for in cases of unintentional errors in the said books of reference.

8 Viet. c. 20,
s. 16.

This section applies only to the line of railway, and not to lands required for collateral purposes (*Doe d. Armistead v. N. Staffordshire Ry. Co.*, 16 Q. B. 526; 20 L. J. Q. B. 249).

Lands re-
quired for
collateral
purpose.

The 100 yards are to be measured from the *medium filum* of the lands to be taken, and not of the space between the rails (*Doe d. Payne v. Bristol and Exeter Ry. Co.*, 2 R. C. 75; 6 M. & N. 320; *Doe d. Armistead v. N. Staffordshire Ry. Co.*, 16 Q. B. 526).

It seems the company may deviate, though serious inconvenience may be caused to the public, if it is not shown that the deviated works will be improperly carried out (*A.-G. v. Gl. W. Ry. Co.*, 14 W. R. 726).

Public incon-
venience.

And an agreement to make certain approaches to a landowner's residence will not prevent the company from deviating, though other approaches may thereby become necessary (*Wood v. N. Staffordshire Ry. Co.*, 1 M. & G. 278).

16. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Works to be
executed.

They may make or construct, in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers (a), canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary (b) or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper;

Inclined
planes, &c.

They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently (c), the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads (d), streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;

Alteration of
course of
rivers, &c.

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;

Drains, &c.

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, &c.

Warehouses,
&c.

8 Vict. c. 20,
s. 16.

Alterations
and repairs.

General
power.

Proviso as to
damages.

machinery, apparatus, and other works, and conveniences as they think proper;

They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead; and

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:

Provided (e) always, that in the exercise of the powers by this or the special Act granted the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special Act, and any Act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.

Company may
take lands for
the purposes
of this sec-
tion.

The company may take lands over which their powers of compulsory purchase extend for the purposes of the works authorized by this section (*Sudd v. Maldon, Witham & Braintree Ry. Co.*, 6 Ex. 143; *Rangeley v. Midl. Ry. Co.*, 3 Ch. 307; *Wilkinson v. Hull, &c. Ry. and Dock Co.*, 20 Ch. D. 323. See *Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745, and see notes to Lands Clauses Act, sect. 18, ante).

But they cannot execute any such works on land of which they have not acquired the ownership (*Rangeley v. Midl. Ry. Co.*, 3 Ch. 306).

Thus the company cannot divert a footpath so as to place it upon land of which they have not acquired the ownership (*Rangeley v. Midl. Ry. Co.*, sup.).

So they cannot make a tunnel under this section without first compensating the owner of the land through which the tunnel is to pass (*Ramsden v. Manchester S. Junction & Altrincham Ry. Co.*, 1 Ex. 723).

Collateral
works.

This section comprehends all collateral works which may become necessary in consequence of the formation of the railway (*Beardmer v. L. & N. W. Ry. Co.*, 1 McN. & G. 112).

A station.

And though a station is not in terms mentioned, the section authorizes the company to take lands over which their compulsory powers extend, though beyond the limits of deviation, for the purpose of building a station (*Cotter v. Midl. Ry. Co.*, 2 Ph. 469; 5 R. C. 187).

The works
must be neces-
sary not
merely conve-
nient or
economical.

The works authorized by this section can be executed only when they are "necessary for making, maintaining, altering, or repairing, and using the railway." The saving of expense to the company does not constitute necessity within the meaning of the section (*R. v. Wycombe Ry. Co.*, L. R. 2 Q. B. 310; *Fenwick v. East London Ry. Co.*, 20 Eq. 544; *Pugh v. Golden Valley Ry. Co.*, 48 L. J. Ch. 666; 12 Ch. D. 274. The dicta to the contrary in *Sadd v. Maldon, Witham & Braintree Ry. Co.*, 6 Ex. 143; 20 L. J. Ex. 102, must be considered overruled).

Diversion of
road.

Thus the company are entitled under this section to divert a road only when the railway cannot be made without diverting it. They are not entitled to divert it merely to save the expense of carrying the road under or over the railway (*R. v. Wycombe Ry. Co.*, L. R. 2 Q. B. 310. See *Lamb v. N. London Ry. Co.*, 4 Ch. 522, 527).

So, if the road can be carried over the railway by a skew bridge without diverting the road, the company cannot divert the road in order to carry it at right angles over the line (*A.-G. v. Dorset Central Ry. Co.*, 3 L. T. N. S. 608).

The case of *A.-G. v. Ely, Haddenham & Sutton Ry. Co.*, 6 Eq. 106; 4 Ch. 194; 38 L. J. Ch. 258, may at first sight appear to be not completely reconcilable with *R. v. Wycombe Ry. Co.* It may be supported as deciding only that where a horizontal or vertical diversion is necessary the company may divert the road horizontally to a point where they are authorized to have a level crossing, if the latter diversion is more beneficial to the public using the road. (See *Lord Romilly's* judgment, 6 Eq. 106).

Necessity of
accommoda-
tion works not
to be decided
by owner.

Where the works of the company would have blocked up the entrance to a lodge, it was held that the company were entitled to take lands of the lodge owner in order to divert the road to the lodge, though the owner did not wish the road to be diverted, and objected to having his land taken for that purpose (*Dowling v. Pontypool, Carleon & Newport Ry. Co.*, 18 Eq. 714).

This case is entirely in harmony with the other authorities. It merely decides that the question whether a deviation is necessary is to be decided upon a reasonable view of the existing circumstances. It is not for a landowner to refuse an

accommodation, which is reasonably necessary, in order that he may recover a larger compensation from the company. 8 Vict. c. 20,
s. 16.

Similarly, the company cannot under this section justify the erection of a mortar mill, which is a nuisance to a neighbouring proprietor (*Fenwick v. East London Ry. Co.*, 20 Eq. 544). Mortar mill.

(a) The word rivers in the first sub-section includes navigable rivers, and the company may appropriate a part of a navigable river to the uses of the railway, provided they leave the residue unimpeded. They cannot alter or divert the entire course of such a river (*Abraham v. G. N. Ry. Co.*, 16 Q. B. 586; 20 L. J. Q. B. 322). Rivers.

As against a private person the company cannot be called upon to show that they have acquired the right to the soil of a navigable river before executing their works upon it (*Ib.*).

(b) The power of erecting temporary bridges over a particular canal has been held not to be taken away by the fact that the special Act allowed permanent bridges to be erected over that canal only under certain restrictions (*London & Birm. Ry. Co. v. Grand Jun. Canal Co.*, 1 R. C. 224; *Priestley v. Manch. & Leeds Ry. Co.*, 2 R. C. 134). Temporary bridges.

(c) Sub-section 2, in terms, authorizes a permanent diversion of rivers, &c. (*Phillips v. L. B. & S. C. Ry. Co.*, 4 Giff. 46). Permanent diversion.

(d) It would seem that the effect of a diversion of a road and substitution of a new road under this section would be to re-vest the road in the original owner discharged from the public right (*Marquis of Salisbury v. G. N. Ry. Co.*, 28 L. J. C. P. 40; 5 C. B. N. S. 174). Diversion of road.

(e) The effect of this clause appears to be to leave the company at liberty to select which of the several works authorised by the section they may prefer, and provided the works they select to carry out are within their powers no action lies against them on the ground that some other works equally authorized by the statute would cause less damage or inconvenience to third persons (*R. v. East & West India Docks & Birmingham Junction Ry. Co.*, 2 E. & B. 466, p. 474; 22 L. J. Q. B. 380; *Fenwick v. East London Ry. Co.*, 20 Eq. 544, p. 549). Effect of proviso.

And generally it may be laid down that where an act authorised by statute is intended to be done in a proper manner, the promoters will not be restrained from doing it on the ground that it can be done with less inconvenience to private persons in some other manner equally authorised by statute (see *Roderick v. Aston Local Board*, 5 Ch. D. 328). Works authorized by statute.

Upon this principle, where a board was empowered to carry a sewer "into, through, or under" any lands, it was held that they could not be restrained from carrying the sewer partly above ground (*Roderick v. Aston Local Board*, 5 Ch. D. 328; *Freehold General Land Improvement Co. v. Metr. Ry. Co.*, 14 L. T. N. S. 96).

At common law a person using his land for any purposes which go beyond the natural user of the land is liable for any injury his neighbours may suffer owing to his user of the land, whether he has been negligent or not (see *Rylands v. Fletcher*, L. R. 3 H. L. 330; *Whalley v. Lanc. & Yorkshire Ry. Co.*, 13 Q. B. D. 131). Liability for injury to land at Common Law.

The effect of statutory authority to carry on any given undertaking is to relieve the company from liability to actions for injuries resulting from the proper carrying on of the undertaking (see *Hammond v. Vestry of St. Pancras*, L. R. 9 C. P. 316; *Dixon v. Metr. Board of Works*, 7 Q. B. D. 418). Statutory authority.

Thus, where a corporation has acted properly within its statutory powers it is not liable for an injury which could have been prevented only by precautions which the corporation have no power to take (*Cracknell v. Mayor of Thetford*, L. R. 4 C. P. 629; *Boughton v. Midl. G. N. Ry. of Ireland*, 1 R. 7 C. L. 169).

And if the company are empowered to purchase land by voluntary agreement for the purpose of cattle yards, they are not liable for a nuisance caused by the user of the land for this purpose (*L. B. & S. C. Ry. Co. v. Truman*, 11 App. C. 46). Cattle yards.

So, the company being empowered to use engines along their line are not liable, in the absence of negligence, for frightening horses or setting fire to a stack by the sparks from the engine (*Rex v. Pease*, 4 B. & Ad. 30; *Vaughan v. Taff Vale Ry. Co.*, 5 H. & N. 679; 29 L. J. Ex. 247). Damage by sparks from engine.

The case is, of course, different if the effect of an Act conferring powers upon a public body is to authorize them to exercise the powers only if no nuisance is caused thereby (*Metr. Asylum District v. Hill*, 6 App. C. 193; *L. B. & S. C. Ry. Co. v. Truman*, 11 App. C. 45). Smallpox hospital case.

On the other hand, in carrying out their works the company are bound to take all reasonable precautions, whether under their power at common law or under their statutory powers, to secure the rights of others from injury (see *Geddis v. Proprietors of Bann Reservoir*, 3 App. C. 430). Reasonable precautions.

Thus, the company will be restrained from carrying on their works without

8 Vict. c. 20,
s. 17.

Interference
with naviga-
tion.

Injury to mill
race.

Floods.

Flooding
mines.

Fires caused
by negligence.

Negligence of
third person.

How far lia-
bility for neg-
ligence ex-
tends.

Action for
breach of sta-
tutory duty.

Duty imposed
for benefit of
an individual.

Damage from
nonfeasance.

taking proper precautions to secure the safety of neighbouring houses (*Biscoe v. Gt. Eastern Ry. Co.*, 16 Eq. 636).

A company has been restrained from carrying the line at so low a level as to interfere with navigation; and from making an arch over a mill race of less than certain dimensions to avoid injury to the race (*Manser v. Northern & Eastern Counties Ry. Co.*, 2 R. C. 380; *Coats v. Clarence Ry. Co.*, 1 R. & M. 181).

In the same way they are bound to take reasonable precautions against floods likely to be caused by the execution of the works (*A.-G. v. Furness Ry. Co.*, 38 L. T. N. S. 555. See, too, *Laurence v. G. N. Ry. Co.*, 16 Q. B. 643; *Brine v. G. W. Ry. Co.*, 10 W. R. 341; 2 B. & S. 402).

So, where the company by making a cutting divert a brook, they are liable to a mine owner whose mine is flooded, because the company maintain inefficient drains (*Bagnall v. L. & N. W. Ry. Co.*, 7 H. & N. 423).

The company would not in such a case be liable if there is no negligence on their part, and the overflow is caused entirely by the acts of third parties over whom they have no control (see *Box v. Jubb*, 4 Ex. D. 77).

For cases of injuries caused by sparks from engines negligently used, see *Aldridge v. G. W. Ry. Co.*, 3 M. & G. 515; *Piggott v. Eastern Counties Ry. Co.*, 3 C. B. 229; *Freemantle v. L. & N. W. Ry. Co.*, 10 C. B. N. S. 89; *Longman v. Grand Junc. Canal Co.*, 3 F. & F. 736; *Dimmock v. N. Staffordshire Ry. Co.*, F. & F. 1058).

Where damage is caused by neglect of a proper precaution the company cannot be heard to say that even if proper precautions had been taken the same damage would have resulted (*Nitrophosphate & Odam's Chemical Manure Co. v. London & St. Katherine Docks Co.*, 9 Ch. D. 503).

But if the damage can be shown to have been caused in part by the act of God, it will be apportioned (*Id.*).

Nor where there is negligence of the company is it any excuse that such negligence would not have caused any injury unless there had also been negligence on the part of third persons (*Harrison v. G. N. Ry. Co.*, 33 L. J. Ex. 266; 3 H. & C. 231. See, too, *The George & Richard*, L. R. 3 A. & E. 466; *Harris v. Mobbs*, 3 Ex. D. 268).

The liability for negligence extends, of course, to the owner of neighbouring land who is injured. It does not extend to a person who has contracted to perform works on that owner's land and finds that by reason of the company's negligence his contract proves less remunerative than it would otherwise have been (*Cattle v. Stockton Waterworks Co.*, L. R. 10 Q. B. 453).

Where a statutory duty is imposed upon a public body for the purpose of benefiting a class of persons, it is a question of construction upon the language of the statute whether a member of the class injured by a breach of the statutory duty can maintain an action.

Where the object is a public one, as, for instance, the supply of water for extinguishing fires, and a penalty is imposed for neglect of the duty, a person whose house is burnt down, because a proper supply of water is not provided, cannot maintain an action (*Atkinson v. Newcastle & Gateshead Waterworks Co.*, 2 Ex. D. 441; *Vallance v. Falle*, 13 Q. B. D. 109).

In such a case no one has a personal right of action merely because the statute is not obeyed, and the supervening damage does not give a right of action which would not have existed without it.

On the other hand, where the duty is imposed for the benefit of a particular individual, who thereby acquires a private right, he may recover damages for breach of the duty, though the statute gives a remedy by injunction to enforce the performance of the duty (*Ross v. Rugge Price*, 1 Ex. D. 269; *Brain v. Thomas*, 50 L. J. Ch. 662).

It is a somewhat different question whether a person injured by the continuance of a state of things which it is the statutory duty of a public body to remove, can maintain an action against the public body merely because it has done nothing. The proper remedy in such a case would appear to be by mandamus.

It appears to be clear that a mandatory injunction cannot be granted in such a case (*Glossop v. Heston & Isleworth Local Board*, 12 Ch. D. 102).

However, in *Guardians of Holborn Union v. Vestry of St. Leonard, Shoreditch*, 2 Q. B. D. 145, an action was held to be maintainable for refusing to remove refuse from the workhouse.

Works below
high-water
mark not to
be executed

17. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the

same as the tide flows and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of her Majesty, her heirs and successors, to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and of the lord high admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of lord high admiral aforesaid for the time being, to be signified in writing under the hand of the secretary of the admiralty, and then only according to such plan and under such restrictions and regulations as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said lord high admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this Act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said lord high admiral, or the said commissioners for executing the office of lord high admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

8 Vict. c. 20,
ss. 18, 19.

without the
consent of
the Lords of
the Ad-
miralty.

[Now the
Board of
Trade, by the
Harbours
Transfer Act,
1862.

25 & 26 Vict.
c. 69, s. 6.]

18. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

Alteration of
water and gas
pipes, &c.

19. Provided always, That it shall not be lawful for the company to remove or displace any of the mains or pipes (other than private service pipes), syphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage

Company not
to disturb
pipes until
they have laid
down others.

8 Viet. c. 20,
ss. 20-24.

of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

Pipes not to be laid contrary to any Act, and 18 inches surface road to be retained.

20. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Company make good all damage.

21. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

When railway crosses pipes, company to make a culvert.

22. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs.

Penalty for obstructing supply of gas or water.

23. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas, they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct.

Penalty for obstructing construction of railway.

24. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power, in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence.

Drainage of
lands.

And whereas there are large tracts of land in Ireland subject to flood and injury by water, and the rivers, streams, and water-courses are in many places obstructed by shoals, insufficient

bridges, culverts, weirs, and other works, whereby the waters thereof are elevated above their natural level: And whereas an Act of parliament was passed in the second year of the reign of his late Majesty King William the Fourth, intituled "An Act to empower Landed Proprietors in Ireland to sink, embank, and remove Obstructions in Rivers": And whereas another Act was passed in the sixth year of the reign of her present Majesty, intituled "An Act to promote the Drainage of Lands, and Improvement of Navigation and Water Power in connection with such Drainage, in Ireland"; and by the said last-mentioned Act public commissioners were appointed to carry the said last-recited Act into execution: And whereas it is essential, for carrying into effect the purposes of the said Acts, and for the improvement of agriculture, that ample provision be made in all railway works in Ireland for the free and uninterrupted passage of the waters at such level as will be sufficient not only for the present but all future discharge of the waters from lands crossed by or being on either side of such works, and that the bridges of railways crossing all watercourses, rivers, lakes, or estuaries which are or hereafter may be made navigable shall be so constructed as to admit of the commodious navigation of the same: Therefore, with respect to the provision to be made for the drainage of land in Ireland which may be crossed by the railway, and for the protection of the navigation connected therewith, be it enacted as follows:

8 Vict. c. 20,
ss. 25, 26.

1 & 2 W. 4,
c. 57.

5 & 6 Vict.
c. 89.

25. If the special Act shall authorise the construction of a railway in Ireland, the company shall and they are hereby required, from time to time, before proceeding to construct any portion of the railway, to submit to the commissioners acting in execution of the said Act of the sixth year of her present Majesty, or any Act amending the same, such plans, sections, and surveys as shall be necessary to enable the said commissioners to decide upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses, and other works across the line of such portion as aforesaid of the railway, for the free and uninterrupted discharge of the waters from all lands crossed by or lying on either side of or near the railway, at such level as shall in the opinion of the said commissioners be sufficient for the present and prospective drainage and improvement of such lands, and (in cases of rivers, lakes, estuaries, or watercourses, which are now or may be capable of being made navigable) upon the height and adequacy of all bridges and works crossing the same, for the commodious navigation thereof.

The company from time to time to submit to the drainage commissioners in Ireland plans, &c., of the portion of the railway which they are about to execute.

26. The said commissioners shall and they are hereby required, without any unnecessary delay, to investigate, by such means as to them shall seem fit, the adequacy of all such works for such purposes as aforesaid, and to decide and certify, by a writing under their hands, or the hands of any two of them, the number, situation, and least possible dimensions as to breadth, depth, and height of the several openings of such bridges, culverts, tunnels, or other

Such commissioners to investigate and report on the works necessary for drainage.

8 Vict. c. 20,
ss. 9—11.

the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorized to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

There is nothing in this or any other section of this Act requiring the plans to show cross sections (*R. v. Caledonian Ry. Co.*, 16 Q. B. 19).

As to the plans, see *ante*, notes to L. C. C. Act, 1845, s. 6.

Clerks of the
peace, &c. to
receive plans
of alterations,
and allow
inspection.

9. The said clerks of the peace, parish clerks, and postmaster shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of her present majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament."

7 Will. 4 &
1 Vict. c. 83.

Copies of
plans, &c. to
be evidence.

10. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Limiting deviation from
datum line
described on
sections, &c.
[See 26 & 27
Vict. c. 92,
s. 4.]

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas works, or waterworks affected by such deviation: provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such

Proviso.

consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty session to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

8 Vict. c. 20,
ss. 12, 13.

Proviso.

Where a company made an embankment more than five feet above the level, having obtained the consent contemplated by this section, but without giving the notice required by section 12, an injunction would have been granted to restrain them proceeding with the embankment, but they were in fact put under terms to take the opinion of the Board of Trade and abide the order of the court after that Board should have given their decision (*Pearse v. Wycombe Ry. Co.*, 1 Drew. 244).

12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Public notice to be given previous to making greater deviations.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

13. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Arches, tunnels, &c. to be made as marked on deposited plans.

[Amended
26 & 27 Vict.
c. 92, s. 4.]

Where the special Act confers powers of stopping up the streets within a certain area, the special Act must be considered to overrule this section, though according to the plans the line was intended to be carried on an arch over one of the streets

8 Vict. c. 20,
ss. 32, 33.

Power to take
temporary
possession of
land without
previous pay-
ment of price.

32. Subject to the provisions herein and in the special Act contained, it shall be lawful for the company, at any time before the expiration of the period by the special Act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing soil thereon;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side of the railway:

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes (a) aforesaid to erect thereon workshops, sheds, and other buildings of a temporary nature: Provided always, that nothing in this Act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special Act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

(a) The "purposes aforesaid" are the purposes mentioned in the earlier part of the section. This section does not therefore authorise the erection of a mortar-mill (*Fenwick v. East London Ry. Co.*, 20 Eq. 544).

Easement by
implication.

Where one company was authorised to construct a bridge over the line of another company, the former was held entitled to such temporary easements as might be necessary to construct the bridge (*G. N. of England v. Clarence Ry. Co.*, 3 R. C. 606).

Company to
give notice
previous to

33. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction

or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said lands are required for any of the other purposes hereinbefore mentioned the company shall (except in the cases aforesaid) give ten days like notice thereof, and the company shall in such notices respectively state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

8 Vict. c. 20,
ss. 34—36.

such tempo-
rary posses-
sion.

A notice under this section should state for which of the purposes mentioned in the section the land is to be used (*Poynder v. G. N. Ry. Co.*, 16 Sim. 3).

34. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of
notices on
owners and
occupiers of
lands.

35. In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as hereinafter mentioned.

Power to
owner to ob-
ject that other
lands ought
to be taken.

36. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to

Power to two
justices to
order that the
lands and
materials
shall not be
taken.

**8 Vict. c. 20,
ss. 37—39.**

be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

Power to justices to order other lands to be taken.

37. If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorised to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

Power to the justices to summon other owners before them.

38. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorised to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

The company to give sureties, if required.

39. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to

take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

8 Vict. c. 20,
ss. 40—42.

40. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads.

Company to
separate the
lands before
using them.

41. That if any land shall be taken or used by the company, under the provisions of this or the special Act, for the purpose of getting materials therefrom for the construction or repair of the railway, or the accommodation works connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party, after notice of the hearing the application shall have been given to the other party.

Lands taken
for getting
materials, &c.,
to be worked
as the sur-
veyor of
owner may
direct.

42. In all cases in which the company shall in exercise of the powers aforesaid enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their

Owners of
lands may
compel com-
pany to pur-
chase lands so
temporarily
occupied.

8 Vict. c. 20,
ss. 43—45.

estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

For a case upon the construction of an award raising the question whether the company had purchased the lands, or only paid compensation for taking gravel and soil therefrom, see *In re Belfast Central Ry. Co.*; *Ex parte Macrory*, 19 W. R. 238.

Compensation
to be made for
temporary
occupation.

43. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special Act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special Act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special Act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Compensation
to be ascer-
tained under
the Lands
Clauses Act.

44. The amount and application of the purchase-money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

*Lands for addi-
tional stations.*

Lands to be
taken for ad-
ditional sta-
tions, &c.

45. And be it enacted, that it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of this or the special Act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,)

For the purpose of making and providing additional stations (a), yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and

loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences :

8 Vict. c. 20,
s. 48.

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

(a) Upon the construction of Acts prohibiting stations within a certain distance of a town, it has been held that such prohibitions will not prevent the company from stopping their trains so as to allow passengers to alight within the prohibited distance (*Provost of Eton College v. G. W. Ry. Co.*, 1 R. C. 200; *Lord Petre v. Eastern Counties Ry. Co.*, 3 R. C. 367; and see *Gordon v. Cheltenham & G. W. Union Ry. Co.*, 2 R. C. 800).

And with respect to the crossing of roads, or other interference therewith, be it enacted as follows :

Crossing of
roads and
Construction of
bridges.

46. If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special Act) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided ; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company : Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

Crossing of
roads.

A provision in the special Act that it should be lawful for the company to cross a particular road on a level, has been held permissive merely, and not compulsory, so as to prevent the company from carrying the road over the line under this section (*Warden of Dover Harbour v. L. C. & D. Ry. Co.*, 30 L. J. Ch. 474; 3 D. F. & J. 559).

Power to
cross road
on level.

It has been doubted whether the company can contract itself out of the power conferred by this section of carrying the road under or over the railway (see *Breynton v. L. & N. W. Ry. Co.*, 10 Beav. 238).

Under this section the company have an option to carry the road over or under the line, and a mandamus to compel them to adopt one alternative will not lie until it is clear that they have determined that option (*R. v. S. E. Ry. Co.*, 20 L. J. Q. B. 428; 15 Q. B. 313; 4 H. L. 471).

Road over
or under the
line.

The company having carried a road over the railway by a bridge is bound to keep both bridge and road, and all the approaches in repair, including the structure of the bridge and approaches, and the metalling of the road on both (*N. Staffordshire Ry. Co. v. Dale*, 8 E. & B. 836; *Trustees of Newcastle-under-Lyme Roads & N. Staffordshire Ry. Co.*, 5 H. & N. 160. S. C. nom. *Leech v. N. Staffordshire Ry. Co.*, 29 L. J. M. C. 160. See *Reg. v. S. E. Ry. Co.*, 32 L. T. N. S. 858).

Bridges and
approaches.

Where the company lower a road they are not bound to keep the slope in repair (*Waterford & Limerick Ry. Co. v. Kearney*, 12 Ir. C. L. 224; *Fosberry v. Waterford & Lin. Ry. Co.*, 13 Ir. C. L. 494; *L. & N. W. Ry. Co. v. Skerton*, 5 B. & S. 559).

Road
lowered.

Where certain persons were empowered to construct a bridge under the line to be maintained at their own expense, it was held the company could not recover the cost of necessary repairs, which had been done without notice to the persons liable to keep the bridge in repair (*L. & S. W. Ry. Co. v. Flower*, 1 C. P. D. 77).

Liability to
repair.

But the company is not liable to maintain and keep in repair substituted roads, but only the bridges constructed under its powers and the immediate approaches (*Magistrates of Perth v. Earl of Kinnoull*, 28 June, 1872, 10 Sc. Sess. Ca. (3rd series), 874).

8 Vict. c. 20,
ss. 47—49.

Liability to
paving rate.
Provision in
cases where
roads are
crossed on a
level.

[By 26 & 27
Vict. c. 92,
s. 7, Board
of Trade
may require
a bridge
instead of
level cross-
ing.]

As to the liability of railway companies to be rated by a local board for the expense of paving the roadway of a bridge built by the company over the line, see *G. E. Ry. Co. v. Hackney Dist. Board*, 8 App. C. 687.

47. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

Private
railway.

Repair of
level crossing.

The provisions of this and the earlier statutory enactments of a similar kind do not apply to a private railway (*Matson v. Baird*, 3 App. C. 1082).

The company are bound to keep a level crossing over a highway in a proper state for the passage of carriages across the rails (*Oliver v. N. E. Ry. Co.*, L. R. 9 Q. B. 409).

This section imposes by implication the duty of seeing that the line is reasonably safe when the gates are opened (*Lunt v. L. & N. W. Ry. Co.*, L. R. 1 Q. B. 277; 35 L. J. Q. B. 105; *N. E. Ry. Co. v. Wanless*, L. R. 7 H. L. 12).

Whether
person may
open gates
himself.

It has been said that a person finding the gates shut and no one to open them is not entitled after a reasonable interval to open them himself. At any rate a person suffering an injury because the gate swings back upon him cannot maintain an action for negligence (*Wyatt v. G. W. Ry. Co.*, 34 L. J. Q. B. 204; 6 B. & S. 709).

As to cross-
ing of turn-
pike roads
adjoining
stations.

48. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

Construction
of bridges
over roads.

49. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road :

8 Viet. c. 20,
s. 50.

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet :

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road :

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

This section does not remove restrictions imposed on the company by any special directions, such as those contained in section 13 (*A.-G. v. Tewkesbury and Malvern Ry. Co.*, 1 D. J. & S. 423).

An agreement with a landowner to erect a bridge 42 feet wide is binding notwithstanding this section (*Clarke v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 1 J. & H. 631).

Where the special Act authorized the company to divert a road and carry it under the railway by a bridge, it was held that the company were bound to give 18 feet headway, and that they could not lower the road so as to make it liable to floods (*A.-G. v. Furness Ry. Co.*, 47 L. J. Ch. 776; 26 W. R. 650).

50. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

Construction
of bridges
over railway.

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet :

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road :

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and

8 Vict. c. 20,
ss. 51—53.

if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

A turnpike road is a road repaired by tolls payable by passengers (*R. v. East & West India Dock & Birmingham Junction Ry. Co.*, 22 L. J. Q. B. 380; 2 E. & B. 466. See *R. v. French*, 4 Q. B. D. 507; and *R. v. London & Birmingham Ry. Co.*, 1 R. C. 317, a decision upon a special Act).

The width of the bridges need not exceed the width of the road in certain cases.

51. Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special Act prescribed for a bridge in the like case over or under the railway.

Footpaths.

Footpaths by the side of a turnpike road are not to be taken as part of the road for the purposes of this section (*R. v. Rigby*, 19 L. J. Q. B. 153; 6 R. C. 479).

Existing inclinations of roads crossed or diverted need not be improved.

52. Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Before roads interfered with, others to be substituted.

53. If, in the exercise of the powers by this or the special Act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tram-road, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

This section applies as well to permanent as to temporary obstruction of a road (*A.-G. v. Barry Docks Co.*, 35 Ch. D. 573; see *Tanner v. S. Wales Ry. Co.*, 25 L. J. Q. B. 7; 5 E. & B. 619).

Where the company are by their special Act expressly authorized to divert a road, there is no obligation under this section to supply a substituted road (*Id.* See, too, *A.-G. v. London & Southampton Ry. Co.*, 9 Sim. 78; 1 R. C. 302).

8 Vict. c. 20,
ss. 54, 55.

As to when a road is to be considered impassable or dangerous (see *A.-G. v. Widnes Ry. Co.*, 22 W. R. 607).

Diversion of
road.

The company are not relieved from the obligation of providing a sufficient road, because there may be an existing road as convenient as any new substituted road could be (*A.-G. v. Gt. N. Ry. Co.*, 4 De G. & S. 75).

A railway company "stopping up and diverting" a portion of a public road so as to cut off all access to and from a property previously bounded by it, is using the road within the meaning of this section, and is accordingly bound to substitute an equally convenient road (*Hay v. City of Glasgow Union Ry. Co.*, 14 July, 1874, 1 Sc. Sess. Ca. (4th series), 1191).

Where a company was bound to substitute new communications, and a landowner, before they had done so, let his land to a lessee, and covenanted to make the communications if the company failed to do so, it was held the landowner could not recover from the company damages recovered against him by his lessee for not making the communications (*Caled. Ry. Co. v. Colt*, 3 Macq. 833).

The statutory duty imposed upon the company may be enforced, either by mandamus, or, when the duty is imposed for the benefit of the public, by indictment, whether in the case of nonfeasance or misfeasance (*R. v. Birmingham & Gloucester Ry. Co.*, 3 Q. B. 223; *R. v. G. North of England Ry. Co.*, 9 Q. B. 315).

Enforcing
statutory
duty.

It is no answer to a mandamus that the works directed to be done will require the company to purchase lands when their compulsory powers have determined (*R. v. Birmingham & Gloucester Ry. Co.*, 2 Q. B. 47; 2 R. C. 694).

Mandamus.

But if the company have exhausted their powers of raising money, and have leased their line in perpetuity to another company, a mandamus will not be issued against them (*Re Bristol & N. Somerset Ry. Co.*, 3 Q. B. D. 10).

For the construction of a private Act authorizing the extinguishment of certain footways which were held to be limited to public footways, see *Wells v. London, Tilbury & Southend Ry. Co.*, 5 Ch. D. 128.

54. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof, and every such penalty shall be recoverable with costs by action in any of the superior courts.

Penalty for
not substituting a
road.

The term owner means owner in possession, so that the tenant of the land and not the reversioner is the person to sue (*Collinson v. Newcastle & Darlington Ry. Co.*, 1 C. & K. 546, was overruled. See Ingram on Compensation, p. 150; *Mann v. Gt. S. & W. Ry. Co.*, 9 Ir. C. L. 105, p. 114).

55. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with costs, by action on the case in any of the superior courts, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Party suffering
damage
from inter-
ruption of
road to
recover in an
action on the
case.

The effect of the section is to take away the right of action for interference with a private right of way, except where there is special damage (*Watkins v. Gt. N. Ry. Co.*, 20 L. J. Q. B. 391; 16 Q. B. 961).

8 Vict. c. 20,
ss. 58—59.

Period for
restoration
of roads in-
terfered with.

56. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period; (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months.

It has been held in Scotland upon the construction of a similar section, that a road which could only be restored by considerable alterations of level, need not be restored (*Christie v. Caledonian Ry. Co.*, 10 Ct. of Sessions Cases, 312).

It would seem that where the original road was forty feet wide, a substituted road thirty feet wide only would not satisfy this section (*R. v. Birmingham & Gloucester Ry. Co.*, 2 Q. B. 47; 2 R. C. 694).

Penalty for
failing to
restore road.

57. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

A private person, who dedicates a road and keeps it in repair, cannot proceed for penalties under this section. The words "other person having the management of the road," refer to a person clothed with some duty in respect of the public *ejusdem generis* with that of trustees, commissioners, or surveyors (*R. v. Wilson*, 21 L. J. Q. B. 281; 18 Q. B. 348).

Company to
repair roads
used by them.

58. If in the course of making the railway the company shall use or interfere with any road they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per

day as to such justices shall seem just; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof: Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

8 Vict. c. 20,
ss. 59-61.

The order of the justices need not specify the damage done if it states the length of the road injured and directs the damage done to be repaired.

Several roads in the same parish may be included in one order (*L. & N. W. Ry. Co. v. Wetherall*, 20 L. J. Q. B. 337; 15 Jur. 247).

This section extends to damage done by additional traffic brought upon the road by contractors or sub-contractors employed in the construction of the works of the company (*West Riding & Grimsby Ry. Co. v. Wakefield Board of Health*, 33 L. J. M. C. 174; 5 B. & S. 478; 12 W. R. 1076).

59. When the company shall intend to apply for the consent of two justices, as hereinbefore provided, so as to authorise them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Proceedings on application to justices to consent to level crossings of bridleways and footways.

60. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner and subject to the like conditions as are hereinafter provided in the case of appeals in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Appeal against the determination of the justices.

61. If the railway shall cross any highway other than a public carriage way on the level, the company shall at their own expense

Company to make sufficient ap-

T.

T

8 Viet. c. 20,
ss. 62-64.

approaches and
fences to
bridleways
and footways
crossing on
the level.

Justices to
have power
to order
approaches
and fences
to be made
to highways
crossing on
the level.

make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

62. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders, within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

*Screens
for turnpike
roads.*

Screen for
roads to be
made, if
required by
the Board of
Trade.

63. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said board.

Penalty for
failing to
construct.

64. Where by any such certificate as aforesaid the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

65. Where, under the provisions of this or the special Act, or any Act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair.

8 Vict. c. 20,
ss. 65, 66.

Construction of
bridges.

Justices to
have power
to order
repair of
bridges, &c.

Where the special Act incorporates so much of the Railways Clauses Consolidation Act, 1845, as relates to the mode of crossing roads and construction of bridges, this section as well as section 145 and the subsequent sections are incorporated (*Bristol & Exeter Ry. Co. v. Tucker*, 13 C. B. N. S. 207).

Where a special Act provided that roads should be repaired to the satisfaction of the trustees of certain turnpike roads, it was held that this section was excluded, but revived upon the expiration of the powers of the turnpike trustees (*L. C. & D. Ry. Co. v. Wandsworth Board of Works*, L. R. 8 C. P. 185; 42 L. J. M. C. 70).

66. And whereas expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special Act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public; be it enacted, that in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature, required by the provisions of this or the special Act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorized by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special Act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be con-

Board of
Trade em-
powered to
modify the
construction
of certain
roads,
bridges, &c.
where a
strict com-
pliance with
the Act is
impossible or
inconvenient.

8 Vict. c. 20,
ss. 67, 68.

structed in conformity with the provisions of this and the special Act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Authentica-
tion of cer-
tificates of
the Board
of Trade,
service of
notices, &c.

67. And be it enacted, that all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special Act, and any Act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special Act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

*Works for
protection
and accom-
modation of
lands.*

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:

68. The company shall make and at all times thereafter maintain the following works (a) for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say,)

Gates,
bridges, &c.:

Such and so many convenient gates, bridges, arches, culverts, and passages (b) over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

fences:

[see ante,
5 & 6 Vict.
c. 55, s. 10.]

Also sufficient posts, rails, hedges, ditches, mounds, or other fences (c) for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

drains:

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times

to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed: 8 Vict. c. 20,
s. 68.

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places: watering
places.

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

Where the landowner released the company from their statutory obligations under this section, they were held not released from their obligations to a tenant from year to year who was in possession at the date of the release (*Cory v. G. W. Ry. Co.*, 7 Q. B. D. 322). Release by
owner.

The company may take lands over which their compulsory powers extend for the purpose of carrying out the accommodation works referred to in this section (*Lord Beauchamp v. G. W. Ry. Co.*, 3 Ch. 745). Land may
be taken for
the purposes
of this
section.

(a) This section does not apply to matters occurring below the surface of the land (*R. v. Fisher*, 32 L. J. M. C. 12; 3 B. & S. 191).

(b) Under a clause in a special Act requiring a company to maintain level crossings to lands cut off by the line, it was held that the company were bound to maintain crossings, not merely for the use of the lands as they were at the time when the Act passed, but also for their use as a building estate (*United Land Co. v. G. E. Ry. Co.*, 10 Ch. 586). User of level
crossings.

A similar decision has been recently given upon the construction of an award under an Inclosure Act, setting out a private carriage road and drift-way (*Finch v. G. W. Ry. Co.*, 28 W. R. 229; 5 Ex. D. 254).

(c) This section imposes on the company only the common law liability of a person bound by prescription to repair fences, i. e., they are bound to repair only for the benefit of the owners and occupiers of the adjoining land and their licensees (*Ricketts v. East & West India Docks and Birmingham Junction Ry. Co.*, 12 C. B. 160; *Dawson v. Midland Ry. Co.*, L. R. 8 Ex. 8). Liability to
fence.

The fence must be sufficient to keep pigs as well as cattle from straying (*Child v. Hearn*, L. R. 9 Ex. 176). Pigs.

It would seem that the company are bound under this section to maintain a fence sufficient to prevent animals from putting their heads through it and eating the produce of the neighbouring field (*Wiseman v. Booker*, 3 C. P. D. 184. See, too, *Bessant v. G. W. Ry. Co.*, 8 C. B. N. S. 368). Sufficiency of
fences.

A highway running parallel with the railway is adjoining land within the meaning of the section (*Manchester, Sheffield and Lincolnshire Ry. Co. v. Wallis*, 14 C. B. 213). Adjoining
highway.

Thus the company are liable for an injury to cattle lawfully passing along an adjoining highway and getting on to the line owing to deficient fences (*Midland Ry. Co. v. Daykin*, 17 C. B. 126).

The fact that the catch of a gate, which the company is bound to maintain, is out of repair, is evidence of negligence, if an animal gets on to the line and is injured (*Brooks v. L. & N. W. Ry. Co.*, 33 W. R. 167).

The duty imposed by the section does not extend to animals trespassing upon land adjoining the railway (*Ricketts v. East & West India Docks & Birmingham Junction Ry. Co.*, 12 C. B. 160). Animals tres-
passing.

Similarly, the protection does not extend to cattle straying upon a highway

8 Vict. c. 20,
ss. 69—72.

adjoining the railway (*Manchester, Sheffield & Lincolnshire Ry. Co. v. Wallis*, 14 C. B. 213).

Nor does the duty extend to passengers on the line of the company, as against whom the company are only bound to use every reasonable precaution to keep cattle off the line (*Buxton v. N. E. Ry. Co.*, L. R. 3 Q. B. 549).

It is not, however, clear that such a duty is not imposed by 5 & 6 Vict. c. 55, s. 10, which has never in terms been repealed, though it has been said that sect. 68 of the Railways Clauses Act is in substitution for that section (see the notes to 5 & 6 Vict. c. 55, s. 10, *ante*).

Adjoining
land of com-
pany.

There is no obligation on the company to fence against adjoining lands of their own, such as a tramway belonging to the company running parallel to the line and allowed to be used by the public (see *Marfell v. S. Wales Ry. Co.*, 8 C. B. N. S. 625; *Roberts v. G. W. Ry. Co.*, 27 L. J. C. P. 266; 4 C. B. N. S. 606).

Differences as
to accommo-
dation works
to be settled
by justices.

69. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such works shall be commenced and executed by the company.

It seems the court would not interfere in a dispute about accommodation works between the company and a landowner, a special tribunal being appointed by the Act (*Hood v. N. E. Ry. Co.*, 11 Eq. 116; 40 L. J. Ch. 17).

Justices can-
not decide the
right to ac-
commodation
works.

This section gives justices no jurisdiction to decide whether or not there shall be accommodation works, but only to decide on their kind, number, and sufficiency (*R. v. Waterford & Limerick R. Co.*, 2 Ir. C. L. 580).

The justices in settling accommodation works can only take into account the existing state of the land (*R. v. Brown*, 36 L. J. Q. B. 322).

And, therefore, in determining whether works made by the company are accommodation works under this section, the state of things existing when the works are done must be considered (*R. v. Fisher*, 32 L. J. Q. B. 32; 3 B. & S. 191).

Execution of
works by
owners on
default by the
company.

70. If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed; and if there be any dispute about such expenses the same shall be settled by two justices: Provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time nor use them in any other manner than is unavoidably necessary for the execution or repair of such accommodation works.

Power to
owners of
land to make
additional ac-
commodation
works.

71. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorized by two justices.

72. If the company so desire, all such last-mentioned accommo-

dation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer, nevertheless the company shall not be entitled to require, either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

8 Vict. c. 20,
ss. 73—76.

Such works to be constructed under the superintendence of the company's engineer.

73. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

Accommodation works not to be required after five years.

After the expiration of five years no action can be brought for damage caused by insufficient works (*Colley v. L. & N. W. Ry. Co.*, 5 Ex. D. 277).

74. Until the company shall have made the bridges or other proper communications which they shall under the provisions herein, or in the special Act, or any Act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

Owners to be allowed to cross until accommodation works are made.

If a landowner has received compensation on the footing that there was to be a total separation of his land without any communication being made, this is an arrangement within this section (*Manning v. Eastern Counties Ry. Co.*, 3 R. C. 637; 12 M. & W. 237).

75. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he, and the carriage, cattle or other animals, under his care, have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

Penalty on persons omitting to fasten gates.

76. And be it enacted, that this or the special Act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own

Branch railways.

Power to par-

8 Vict. c. 20,
s. 77.

ties to make
private branch
railways com-
municating
with the rail-
way.
5 & 6 Vict.
c. 55.

lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an Act passed in the sixth year of the reign of her present Majesty, intituled "An Act for the Better Regulation of Railways, and for the Conveyance of Troops;" and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned Act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other monies for the passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions; (that is to say,)

Restrictions
and condi-
tions.

No such branch railway shall run parallel to the railway :

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel :

The persons making or using such branch railways shall be subject to all bye laws and regulations of the company from time to time made with respect to passing upon or crossing the railway, and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

Similar provisions in special Acts have been held to be not confined to the state of the land at the time the Act passed, but to be for the benefit of the occupiers from time to time (*Monkland & Kirkintilloch Ry. Co.*, 3 R. C. 273; *Bishop v. North*, *id.* 459; 11 M. & W. 459).

Whether con-
sent to an
opening is
revocable.
Sidings.

Where the company has by parol assented to an opening, and a communication has been made, they cannot revoke their assent (*Bell v. Midland Ry. Co.*, 3 De G. & J. 673. See, too, 10 C. B. N. S. 287).

As to the rights of a person over a siding connected with the railway to have the siding kept open at the expense of the company, see *Woodruff v. Brecon & Merthyr Tydfil, &c. Ry. Co.*, 28 Ch. D. 190.

Working of
mines.

And with respect to mines lying under or near the railway, be it enacted as follows :

Company not
to be entitled
to minerals.

77. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out

of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby. 8 Vict. c. 20, s. 78.

The result of the authorities upon reservations of mines and minerals in deeds has been stated to be "that a reservation of minerals includes every substance which can be got from underneath the surface of the earth for the purpose of profit," including substances which can only be got by destroying the surface (*Hezt v. Gill*, 7 Ch. 699, 712. See, too, *Midland Ry. Co. v. Checkley*, 4 Eq. 19).

Meaning of mines and minerals.

The effect of a reservation of mines is that the space of subsoil containing the minerals as well as the minerals contained in it is reserved and remains the property of the grantor, whether the minerals are worked out or not (*Ramsay v. Blair*, 1 App. C. 701).

Mines.

And it has now been decided that the word mines in this section includes minerals whether got by underground or open workings. Clay is, therefore, a mineral within the section (*Midland Ry. Co. v. Haunchwood Brick & Tile Co.*, 20 Ch. D. 552).

Clay is a mineral.

Notwithstanding this and the following sections the company may, if they think fit, give notice to treat for the purchase of minerals under the lands over which their compulsory powers extend. And they may do so after they have purchased the surface (*Errington v. Metr. Dist. Ry. Co.*, 19 Ch. D. 559).

Company may take minerals.

The fact that the land is valued as building land does not give the company a right to the minerals, though the only minerals in the land may be brick earth and gravel (*In re Metr. Ry. Co. & Cotton's Trustees*, 45 L. T. 103).

78. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

Mines lying near the railway not to be worked if the company willing to purchase them.

The effect of this section is that so far as relates to "mines or minerals under the railway or within the prescribed distance," the company are deprived of the right to support which they would have under an ordinary conveyance. If, after notice from the owner, that he is desirous of working the minerals, the company do not give compensation, the owner may work and take all such minerals without leaving support (*G. W. Ry. Co. v. Bennett*, L. R. 2 H. L. 27, confirming *Fletcher v. G. W. Ry. Co.*, 4 H. & N. 242; 5 H. & N. 689; and see *Pountney v. Clayton*, 11 Q. B. D. 820).

Right to support from mines.

The same principle applies where the mineowner has granted to the company a right to make and maintain a tunnel through his lands without granting the lands themselves (*L. & N. W. Ry. Co. v. Ackroyd*, 8 Jur. N. S. 911; 31 L. J. Ch. 588).

Where the company refuse to purchase the minerals within the specified distance after the usual notice, the landowner may work them in a proper manner, and no action lies against him for any injury to the railway.

Refusal of company to buy minerals. No injury to be done by working mines.

And in such a case a provision that in working the mines no injury is to be done, must be understood as referring to extraordinary injury (*Dudley Canal Navigation Co. v. Grazebrook*, 1 B. & Ad. 59; *Stourbridge Canal Co. v. Earl of Dudley*, 30 L. J. Q. B. 108).

It is a different question, whether the mineowner can maintain an action against the company for an injury caused by the works of the company to mines which they refuse to purchase.

Mineowner injured by works.

The principle appears to be, that if the injury is caused by the works of the com-

8 Vict. c. 20,
s. 79.

pany conducted in accordance with their statutory powers and without negligence, no action lies. On the other hand, if the injury is caused by the neglect of any duty which the company are bound to perform, they will be liable for the damage resulting therefrom.

Thus, no action lies against a canal company whose canal the mineowner taps in the course of working his mine (*Dunn v. Birmingham Canal Co.*, L. R. 8 Q. B. 42).

On the other hand, if a railway company omit to maintain efficient drains in accordance with their statutory duty, and by reason of such omission floodwater drowns the mine, the company are liable (*Bagnall v. L. & N. W. Ry. Co.*, 31 L. J. Ex. 129, 480; 7 H. & N. 423; 1 H. & C. 544. See, too, *Cattle v. Stockton Waterworks Co.*, L. R. 10 Q. B. 453).

Who should
give notice.

The person entitled to give the notice under this section is the person entitled to work the mines at the time of giving the notice. If this person is a lessee he must be compensated according to the nature of his interest.

If the reversioner has a right beyond that of the lessee, he is entitled to be compensated for that under section 6. And all the persons entitled to be compensated will be restrained from working the mines (*Smith v. G. W. Ry. Co.*, 3 App. C. 165).

The company may give a counter-notice at any time. They are not bound to do so within the thirty days after which the owner may work the mines (*Dixon v. Caledonian & Glasgow, &c. Ry. Cos.*, 5 App. C. 82).

Support of
mines be-
yond the
prescribed
distance.

It will be noticed that the cases above cited refer only to mines under the railway or works connected therewith, or within the prescribed distance. They do not touch the question of the right to adjacent support by mines beyond the prescribed distance.

It would seem that notwithstanding provisions depriving the company of a right to support within the prescribed distance, except on the terms of purchasing the minerals, the company are, nevertheless, entitled to adjacent support beyond that distance as against the vendor of the lands purchased by them (*Elliott v. N. E. Ry. Co.*, 32 L. J. Ch. 402; 10 H. L. 333).

However, in *The Midland Ry. Co. v. Checkley*, 4 Eq. 19, where the Act prohibited the working of minerals within ten yards of a canal, and provided compensation for that case, it was held the company were entitled to restrain the working of minerals outside that limit only upon terms of paying compensation. The case is not, perhaps, very intelligible.

Birmingham Canal Navigation Co. v. Earl of Dudley, 7 H. & N. 969, where the only question was whether the compensation clause applied as well to the prohibition to work within twenty yards of a tunnel as to the prohibition to work within twelve yards of the canal, is no authority on this point.

Independently of statutory provisions a vendor conveying to a company land which they have compulsory powers of purchasing, whether the conveyance be in pursuance of a voluntary agreement or not, impliedly grants the right of subjacent and adjacent support to the railway by his own neighbouring lands (*Caledonian Ry. Co. v. Sprot*, 2 Macq. 449; *Same v. Belhaven*, 3 Macq. 66; *N. E. Ry. Co. v. Crosland*, 2 J. & H. 565; 32 L. J. Ch. 353).

It has been held that a board empowered to make a sewer was not entitled to lateral support, there being no power of compensating any but persons whose lands were directly affected by the sewer (*Metropolitan Board of Works v. Metropolitan Ry. Co.*, L. R. 3 C. P. 612; 4 *ib.* 192. See *Roderick v. Aston Local Board*, 5 Ch. D. 328).

If company
unwilling to
purchase,
owner may
work the
mines.

79. If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think

fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier, the expense occasioned thereby, by action in any of the superior courts. 8 Vict. c. 20,
ss. 80, 81.

The effect of this section is to prevent the mineowner from beginning to work within 30 days of his notice. It does not preclude the company from giving counter-notice at any future time, if they consider their safety requires it (*Dixon v. Caledonian & Glasgow & S. W. Ry. Cos.*, 5 App. C. 820).

The mineowner may work the minerals by open workings, if that is the usual mode of working minerals in the district (*Midland Ry. Co. v. Miles*, 33 Ch. D. 632).

80. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon. Mining com-
munications.

This section is not limited to mines within forty yards from the railway (*Midland Ry. Co. v. Miles*, 30 Ch. D. 634; see 33 Ch. D. 632).

If the company by purchasing the minerals under the line cut off one part of a mineral property from the other, the owner is not entitled to pass over the line to have access to his minerals, but he must under this section tunnel under the line, and he is entitled under the following section to be compensated for any additional expense he thereby incurs (*Midland Ry. Co. v. Miles*, 30 Ch. D. 634; see 33 Ch. D. 632).

81. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration. Company to
make compen-
sation for
injury done to
mines;

An arbitrator under this section may award compensation for expenses capable of immediate ascertainment, though not actually incurred (*Whitehouse v. Wolver-*

8 Vict. c. 20, ss. 82—86. *hampton Ry. Co., L. R. 5 Ex. 6; 39 L. J. Ex. 1. See, too, Mordue v. Dean of Durham, L. R. 8 C. P. 336).*

Compensation must it seems be made not only for the value of coal in the bed, but for the additional profit which could be made in getting it (*Barnsley Canal Co. v. Twibell*, 13 L. J. Ch. 434).

and also for any airway or other work made necessary by the railway.

82. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to company to enter and inspect the working of mines.

83. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Penalty for refusal to inspect.

84. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

85. If it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier by action in any of the superior courts.

Passengers and goods on railway.

And with respect to the carrying of passengers and goods upon the railway, and the tolls to be taken thereon, be it enacted as follows:

Company to

86. It shall be lawful for the company to use and employ loco-

motive engines (a) or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable* charges in respect thereof as they may from time to time determine upon, not exceeding the tolls (b) by the special Act authorized to be taken by them.

(a) The effect of this section is to absolve the company from the liability, to which they would otherwise be subject, for an accidental fire caused by sparks from the engine, where there is no negligence (*Vaughan v. Taff Vale Ry. Co.*, 5 H. & N. 679; 29 L. J. Ex. 247. See *Jones v. Festiniog Ry. Co.*, L. R. 3 Q. B. 733).

The company would of course be liable if the fire could be shown to be caused by negligence (*Smith v. L. & S. W. Ry. Co.*, L. R. 5 C. P. 98; 6 *ib.* 14; and see the notes to section 16, *ante*, pp. 255, 256).

The section does not authorize the company to set up a shed for cleaning engines in such a way as to be a nuisance (*Smith v. Midland Ry. Co.*, 37 L. T. 224).

(b) The tolls are by the Standing Orders of the House of Commons to be fixed by the committee on the bill.

This section appears not to give railway companies the power to charge their maximum rates, but to make "such reasonable charges" as they may determine, not exceeding the tolls authorized. (See Suggestion in the Fourth Annual Report of the Railway Commissioners, p. 6, par. 14.)

A railway company seems to be a carrier on its railway, where it has the conduct of the trains run, whether those trains be made up of carriages or engines belonging to a trader, or hired by him from the company; or, in other words, where the locomotion and the whole conduct of the trains are in the hands of the engine-drivers, firemen, and brakemen of the company (*Aberdeen Commercial Co. v. Gt. North of Scotland Ry. Co.*, 3 Nev. & Mac. 205).

A company refusing to act as carriers of particular goods, except by special agreement, cannot charge higher tolls in respect of such goods than those authorized by the special Act (*Aberdeen Commercial Co. v. Gt. North of Scotland Ry. Co.*, 3 Nev. & M. 205; *Chatterley Iron Co. v. N. Staffordshire Ry. Co.*, 3 Nev. & M. 238). As to the different senses in which the word "toll" is used in this Act, see *Highland Ry. Co. v. Jackson*, 3 Sc. Sess. Ca. (4th Series), 681.

The company are not bound to carry by the shortest route. If, therefore, the usual course of traffic is to carry goods to a large goods station on a branch line and back, they may charge the mileage rate for this deviation there and back (*Myers v. L. & S. W. Ry. Co.*, L. R. 5 C. P. 1; 39 L. J. C. P. 37; and see a case where the interpretation of a lease of a railway raised a similar question, *Salisbury & Dorset Ry. Co. v. London & S. W. Ry. Co.*, 3 Nev. & Mac. 314).

It is a question, however, whether an indirect route would be allowed by the railway commissioners as "reasonable" within the meaning of section 11 of The Regulation of Railways Act, 1873, and whether they would hold that a company so forwarding and charging were giving reasonable facilities (see *Victoria Coal Co. v. Neath and Brecon & Midland Ry. Cos.*, 3 Nev. & Mac. 37).

It is sometimes said that Acts imposing tolls are to be construed against the company and in favour of the public (see *Stockton & Darlington Ry. Co. v. Barrett*, 7 M. & G. 870; 11 Cl. & F. 590, p. 607; *Parker v. Gt. Western Ry. Co.*, 7 M. & G. 253; *Stourbridge Canal Co. v. Wheeley*, 2 B. & Ad. 792, at p. 793; and per Railway Commissioners in *Aberdeen Commercial Co. v. Gt. North of Scotland Ry. Co.*, 3 Nev. & Mac. 205, at p. 213. And, further, as to the construction of special Acts, see *Parker v. Gt. Western Ry. Co.*, 11 C. B. 545; *Edwards v. Gt. Western Ry. Co.*, 11 C. B. 588; *Monmouthshire Ry. Co. v. Williams*, 27 L. J. N. S. 134; and *R. v. Leicester & Northampton Canal Co.*, 3 R. Ca. 1).

This doctrine would probably not be considered as having much weight at the present day, the true principle being that Acts imposing tolls must be fairly construed. The analogy of Taxing Acts, properly so called, does not apply to railway Acts regulating tolls, since such Acts do not give the right to payment, but rather moderate and limit a right to payment which otherwise might exist without limit (see per the Lord Chancellor in *Pryce v. Monmouthshire Canal & Ry. Co.*, 4 App. O. 197).

Where the company are entitled to charge a certain toll "per ton per mile," it appears to be doubtful whether they can charge rateably for fractions of a ton or fractions of a mile. And the same doubt exists where the company are authorized

8 Vict. c. 20, s. 86.

employ loco-motive power, carriages, &c.

* [By 3 & 4 Vict. c. 97, s. 3, Board of Trade may require returns of tolls. By 7 & 8 Vict. c. 85, s. 1, the Treasury may revise tolls.] Liability for fires.

Tolls not authorized by Act.

Shortest route.

Construction of Acts imposing tolls.

Mileage rate.

8 Vict. c. 20,
s. 86.

to charge any sum "not exceeding" a certain sum per ton per mile (*Pryce v. Monmouthshire Canal & Ry. Co.*, 4 App. C. 197. In that case the Court of Appeal held such a clause authorized a rateable charge, and the House of Lords was equally divided).

It has been held in Ireland that under a clause directing that the "fare" of a passenger shall not exceed a penny a mile, the company could not charge for a fraction of a mile (*Rice v. Dublin & Wicklow Ry. Co.*, 8 Ir. C. L. 160).

Tolls upon the
"railway."

A clause limiting the tolls to be taken upon the "Railway" has upon the construction of several special Acts been held to apply to the whole undertaking, main and junction lines included (*Bristol & Exeter Ry. Co. v. Garton*, 8 H. L. 477).

Fixed scale
of toll.

Where the tolls are fixed by the special Act the fixed rates apply as well where the company carry as common carriers as where other persons are allowed to use the line. And, independently of statute or agreement, the company are not entitled to charge for terminal services (*Pegler v. Monmouthshire Ry. & Canal Co.*, 30 L. J. Ex. 249; 6 H. & N. 644).

Terminal
services.

Small parcels
clause.

Under the usual clause allowing a higher rate to be charged for small parcels, and providing that "articles sent in large aggregate quantities although made up of separate parcels, such as bags of sugar, coffee, meal, and the like, shall not be deemed small parcels, but such term shall apply only to single parcels in separate packages," it has been held that the company are entitled to charge as separate parcels several packages containing similar articles, but not of such a nature that a large quantity was usually made up in separate packages (*Parker v. Gt. W. Ry. Co.*, 6 E. & B. 77).

And several bags of coffee sent at different times, though intended to go by the same train, were held to be chargeable as separate packages (*Id.*).

Six miles
clause.

Under a special Act authorizing the company to take tolls as for six miles for distances under six miles, and providing that where goods were carried over the company's line, and over any other line which they had a right to use, the tolls should be computed as if the whole distance traversed were on the same line, it was held that the six-mile clause did not apply to goods carried for less than six miles over the company's line, but forwarded for a distance greater than six miles on another continuous line (*Lancashire & Yorkshire Ry. Co. v. Gidlow* (No. 1), 42 L. J. Ex. 129).

Special ser-
vices clause.

Where the company are authorized to charge a mileage rate for conveyance, and everything incidental to conveyance, and also to charge for terminal services particularised as "loading, covering, and unloading of goods, delivery and collection, and any other services incidental to the business or duty of a carrier, where such services, or any of them, are or is performed by the company, and warehousing and wharfage of goods, or any other extraordinary services performed by the company;" haulage and shunting the waggons of a colliery owner from his siding in marshalling the trains and returning empty waggons, are included in the mileage rate as incidental to the conveyance, and no charge can be made in respect of these matters under the special services clause (*Lancashire & Yorkshire Ry. Co. v. Gidlow*, L. R. 7 H. L. 517; *Dunkirk Colliery Co. v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 2 Nev. & M. 402; *Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co.*, 3 Nev. & M. 5).

A colliery owner who is allowed to leave his coal on the ground of the company adjoining the lines cannot be charged for this under the special services clause (*Lancashire & Yorkshire Ry. Co. v. Gidlow*, *supra*).

Service inci-
dental to duty
of a carrier.

On the other hand, station accommodation, use of sidings, weighing, checking, clerkage, watching and labelling, provided and performed by the company in respect of goods-traffic carried by them as carriers, may be, and *prima facie* are, "services incidental to the duty or business of a carrier" (*Hall & Co. v. L. B. & S. C. Ry. Co.*, 15 Q. B. D. 505; see 17 Q. B. D. 230; and see *Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co.*, 4 B. & Mac. 128).

Services at
the junction
with a private
line.

Providing, maintaining, and working signalling and interlocking apparatus, at a junction with a colliery, and providing coal shoots for unloading coal waggons, is service for which a charge could be made under the special services clause (*Dunkirk Colliery Co. v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 2 Nev. & M. 402).

Unloading
into a depôt.

A company cannot it seems make a terminal charge for merely unloading into a depôt where they have no sidings for delivery (*Locke v. N. Eastern Ry. Co.*, 3 Nev. & M. 44).

Use of
sidings.

A charge cannot be made for the mere use of sidings in shunting or unloading, on the ground that they are terminal services, so long as there is no delay in unloading (*Chatterley Iron Co. v. N. Staffordshire Ry. Co.*, 3 Nev. & M. 238).

The company being bound by an order made under the Cattle Plague Act, 11 & 12 Vict. c. 107, to cleanse trucks used for the carriage of cattle, cannot

recover the cost of cleansing from the person whose cattle are carried, on the ground that it is a special service (*Cox v. Gt. E. Ry. Co.*, L. R. 4 C. P. 181; 38 L. J. C. P. 153).

8 Vict. c. 20,
s. 87.

Where the company charged more than they were entitled to for tolls, it was held, that they could not recover any part of the excess on the ground that special services had been performed, no notice having been given by the company that they made any claim for special services, and no option allowed to the goods owner whether he would perform the services for himself (*Lancashire & Yorkshire Ry. Co. v. Gidlow* (No. 1), 42 L. J. Ex. 129).

Charge for
special ser-
vices.

For the construction of a clause authorising the company to take increased charges by agreement with respect to conveyance, notwithstanding an earlier clause fixing maximum tolls, see *Wrexham Ry. Co. v. Little Mountain, &c. Co.*, 38 L. T. N. S. 290.

A corporation claiming tolls traverse on goods brought within the limits of a borough, and granting lands within those limits to a railway company without any reservation of tolls, has no right to tolls upon goods carried upon the railway (*Brecon Markets Co. v. Neath and Brecon Ry. Co.*, L. R. 8 C. P. 157).

Tolls traverse.

Where a statute imposed a duty on coals "imported and landed at the town of Harwich, or otherwise brought or delivered within the limits of the town," the duty was held to be payable as well on coals brought by railways as on sea-borne coals (*Gt. E. Ry. Co. v. Mayor of Harwich*, 41 L. T. N. S. 533).

87. It shall be lawful for the company from time to time to enter into any contract with any other company, being the owners or lessees or in possession of any other railway, for the passage over or along the railway by the special Act authorised to be made of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriages of the company, or which shall pass over their line of railway, upon the payment of such tolls and under such conditions and restrictions as may be mutually agreed upon; and for the purpose aforesaid it shall be lawful for the respective parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways.

Company em-
powered to
contract with
other compa-
nies.

[As to work-
ing agree-
ments, see
The Railways
Clauses Act,
1863 (26 & 27
Vict. c. 92),
ss. 22-29. As
to leases, see
8 & 9 Vict.
c. 96.]

This section does not authorize a company to delegate its statutory powers, or to enter into an agreement amounting to a lease of its line to another company.

Statutory
powers cannot
be delegated.

But provided no exclusive rights are conferred, an agreement by which in effect one company ceases to carry over its lines, and hands the traffic over to another company, is not invalid.

A company may enter into an agreement, that another company shall use its line, paying tolls fixed with reference to the gross receipts, and providing for the carriage of local traffic on certain terms, there being nothing preventing the first company from exercising its statutory powers, or from entering into similar agreements with other companies or persons (*Midl. Ry. Co. v. Gt. W. Ry. Co.*, 8 Ch. 841).

Such an agreement, conferring no exclusive rights, will, of course, not prevent either company from entering into an agreement with a third company, giving such third company running powers (*Gt. N. Ry. Co. v. Manchester, &c. Ry. Co.*, 5 L. T. N. S. 667).

Agreement
conferring
running
power.

In the case of traffic arrangements, where mutual facilities are given, or where one company gives consideration to the other, a working agreement must be presumed to be irrevocable in the absence of evidence to the contrary (*Gt. N. Ry. Co. v. Manchester, &c. Ry. Co.*, 5 De G. & S. 138; *Llanelly Ry. Co. v. L. & N. W. Ry. Co.*, L. R. 7 H. L. 550).

Working
agreement.

The cases above cited show, that the court now takes a more liberal view of the powers of railway companies to enter into traffic arrangements than in earlier cases. For instance, it would seem that such an agreement as that held bad in *Winch v. Birkenhead, Lancashire & Cheshire Junction Ry. Co.*, 5 De G. & S. 562, would now be

Construction
of working
agreements.

8 Vict. c. 20, considered valid. (See, too, *S. Yorkshire Ry. & River Dun Co. v. Gt. N. Ry. Co.*, 3 D. M. & G. 576).

Apportionment of tolls. A provision that the receipts from through traffic shall be apportioned between the companies according to their mileage proportion with an allowance for working expenses, is valid (*Llanelli R. & Dock Co. v. L. & N. W. Ry. Co.*, L. R. 7 H. L. 550).

The tolls payable may be calculated on a graduated system. Thus, an agreement giving one company power to carry coals over the line of the other, was held good, where the consideration agreed upon was, that if less than a certain amount of coals should be carried during any six months, such tolls should be paid as would enable the company to pay 3 per cent. on their called-up capital less the clear profits they might make in the same six months, the sum to be paid being increased according to the amount of coals carried, up to 400,000 tons, but there being no increase beyond that sum, and that if the advance in quantity should raise the dividend to £4 10s. per cent., the toll should never fall below the sum which would enable that dividend to be paid (*Gt. N. Ry. Co. v. S. Yorkshire Ry. & River Dun Co.*, 9 Ex. 55, 642; 7 R. C. 773; 22 L. J. Ex. 305; 23 *ib.* 186).

Guarantee of capital of another company. But if the consideration amounts to a guarantee by the running company of the dividends upon the share capital of the other, irrespective of the amount of traffic carried, the agreement is bad.

Thus, an agreement under which one company is to carry the whole traffic of the other company in consideration of such "toll" as will when added to the net profits of the second company make up its dividend to a certain amount, is not valid under this section (*Simpson v. Dennison*, 10 Hare, 51; 16 Jur. 830).

Agreement to regulate competition. It seems two companies having the same termini may, in order to avoid competition, come to an agreement with reference to the traffic along existing routes on their lines, with a view to distribute such traffic and the revenue derived from it between the two companies (*Hare v. L. & N. W. Ry. Co.*, 2 J. & H. 480). See the judgment in that case, where *Shrewsbury & Birmingham Ry. Co. v. L. & N. W. Ry. Co.*, 7 R. C. 531; 2 Mac. & G. 324; 3 Mac. & G. 70; 17 Q. B. 652; 16 Beav. 441; 4 D. M. & G. 115; 6 H. L. 113 are discussed; and see *Lancaster & Carlisle Ry. Co. v. N. W. Ry. Co.*, 2 K. & J. 293).

It has been said, however, that such an agreement would be illegal, if it extended to future traffic upon a line of railway which the company may thereafter be empowered to construct (*Midl. Ry. Co. v. L. & N. W. Ry. Co.*, 2 Eq. 524).

Amalgamation is invalid. A scheme amounting to an amalgamation of two existing companies, the profit and loss being brought into one common fund and divided in certain proportions, is illegal (*Charlton v. Newcastle and Carl. Ry. Co.*, 7 W. R. 731).

Company may agree not to carry. A company cannot be compelled to carry over any part of its line, and there appears to be nothing illegal in an agreement that it will not do so (*Lancaster, &c. Ry. Co. v. N. W. Ry. Co.*, 2 K. & J. 293).

A company may agree with dock-owners in consideration of the use of the docks to pay tolls as well on goods carried on their line and shipped at those docks as on goods so carried and shipped at other docks in connection with the railway (*Taff Vale Ry. Co. v. Macnabb*, L. R. 6 H. L. 169).

Such an agreement does not *prima facie* extend to goods carried along a line constructed after the date of the agreement and leased to the company (*ib.*).

Transfer of rights to new company. An agreement by a small company to pay a toll on traffic carried over the line of another company has been held upon the construction of the agreement to entitle an amalgamated company taking over the rights of the small company to carry its enlarged traffic on payment of the same toll (*Lancashire & Yorkshire Ry. Co. v. E. Lancashire Ry. Co.*, 6 R. C. 802; 21 L. J. Ex. 62; 23 *ib.* 167; 25 *ib.* 278; 7 Ex. 126; 9 Ex. 591; 5 H. L. 792).

Where two companies are jointly possessed of a station and line, one of them cannot, under an illegal agreement to take over the traffic of a third company, bring such traffic over the joint station and line (*L. B. & S. C. Ry. Co. v. L. & S. W. Ry. Co.*, 7 W. R. 591; 4 De G. & J. 362).

Contracts not to affect persons not parties thereto.

88. Provided always, that no such contract as aforesaid shall in any manner alter, affect, increase, or diminish any of the tolls which the respective companies, parties to such contracts, shall for the time being be respectively authorized and entitled to demand or receive from any person or any other company, but that all other persons and companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the said railways, upon the same terms and conditions, and on payment of

the same tolls, as they would have been in case no such contract had been entered into. 8 Vict. c. 20,
s. 89.

89. Nothing in this or the special Act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of the realm, stage coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the company of any protection or privilege which common carriers or stage coach proprietors may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

Company not to be liable to a greater extent than common carriers.

A railway company are not as such bound to be carriers, section 86 being permissive merely (*Johnson v. Midland Ry. Co.*, 4 Ex. 367. See *Oxlade v. N. E. Ry. Co.*, 15 C. B. N. S. 680. See also *Palmer v. Grand Junction Ry. Co.*, 4 M. & W. 767).

I. Carriage of goods.

They may, therefore, refuse to carry any kind of goods except upon special terms, subject to this, that if they undertake to carry, they cannot, by reason of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31, s. 31), exempt themselves from liability for the neglect or default of themselves or their servants, except in the cases provided by that section, and subject also to this, that the special contract must be signed by the owner of the goods or his agent.

Railway company not bound to carry.

It appears, however, that there is nothing in that Act to prevent the company from exempting themselves from liability for accidental injuries to goods (see *Harrison v. L. B. & S. C. Ry. Co.*, 31 L. J. Q. B. 113; 2 B. & S. 152. And see *post*, section 7 of the Railway and Canal Traffic Act, 1854).

Company may exempt themselves from liability as insurers.

But so far as the company hold themselves out as carriers they are bound to carry. Thus, if they give notice that they will carry to a place outside England, they are liable to an action at the suit of a carrier for whom they refuse to carry beyond the limits of England (*Crouch v. L. & N. W. Ry. Co.*, 7 R. C. 717; 23 L. J. C. P. 73; 14 C. B. 255).

Company must carry in accordance with their profession.

The remedy in such a case of the person whose goods the company refuse to carry is by action, not by *mandamus* (*Ex parte Robins*, 7 Dowl. 566).

If the company in all cases require persons sending a particular class of goods to enter into special agreements with them, they would not, it seems, be common carriers of such goods (see *Liver Alkali Co. v. Johnson*, L. R. 9 Ex. 338; *Scaife v. Farrant*, L. R. 10 Ex. 358).

What constitutes common carrier.

A carrier cannot refuse to carry a parcel on the ground that he is not informed of its contents (*Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255).

Where an article is delivered to a carrier, that article, and everything in or upon it is delivered to him. It is the duty of the carrier to inquire what the article contains (*Walker v. Jackson*, 10 M. & W. 161, where a box of jewels was placed under the seat of a carriage to be conveyed in a ferry boat. See, too, *Gibbon v. Poynton*, 4 Burr. 2299, for the old law on this subject).

Carrier not entitled to know contents. Delivery of article.

Where a company receives goods to be carried to a station beyond its own line, the contract is with that company only, and that company only can be sued by the owner of the goods if they are destroyed on the line of a second company (*Muschamp v. Lancaster & Preston Ry. Co.*, 8 M. & W. 421; *Scothorn v. S. Staffordshire Ry. Co.*, 8 Ex. 341; *Bristol & Exeter Ry. Co. v. Collins*, 7 H. L. 194. See, too, *McCourt v. L. & N. W. Ry. Co.*, 1 R. 3 C. L. 462).

Liability under contract to carry.

In such cases a servant of another company over which the goods are sent is to be considered the servant of the contracting company for the purpose of taking instructions for the countermand of the delivery of parcels. The contracting company are therefore liable if a servant of the second company disobeys an order given to him by the owners of the goods (*Scothorn v. S. Staffordshire Ry. Co.*, 8 Ex. 341).

The contracting company are liable, though the goods are sent partly by sea, and are injured on the sea voyage, and the company could not in such a case set up that they have no power to carry by sea (*Wilby v. W. Cornwall Ry. Co.*, 2 H. & N. 703; *Doolan v. Midland Ry. Co.*, 2 App. C. 192).

Carriage partly by sea.

The rule is not altered by the fact, that the contracting company provide that they will receive the charges payable to other companies for conveyance over the lines of the latter, but will not be liable for loss or damage beyond their own line (*Coxon v. G. W. Ry. Co.*, 5 H. & N. 274).

8 Vict. c. 20,
s. 89.

Joint traffic
arrangement.
Evidence of
contract.

Company
losing lug-
gage liable.

Parol
evidence.

Carrier con-
tracts with
owner of the
goods.

Who must sue
under contract
to carry.

Goods sent on
approval.
Bailee of
goods.

Consignee
may alter
destination.

Carriers'
liability.

Carrier by
sea.

Warranty of
seaworthi-
ness.

What is an
act of God.

Where the traffic upon two lines is carried on for the joint benefit of the two companies, either may be made liable for the loss of goods carried over the joint line (*Gill v. Manchester Ry. Co.*, L. R. 8 Q. B. 186).

Where goods are delivered to an agent of two companies at a place where only one of the two companies has a station, and are handed by him to that company to go by the line of the other, there is evidence of a contract for the whole distance by the first company (*Webber v. G. W. Ry. Co.*, 4 H. & C. 582).

Intermediate carriers by sea receiving goods addressed to an inland station and delivered by the sea carriers to a railway company cannot be presumed to have contracted to deliver the goods at the inland station (*Teats v. Dundalk & Newry Steam Packet Co.*, L. R. 6 C. L. 536).

Where a passenger takes a ticket from company A. to a station on company B.'s line, and his portmanteau is lost by company B., the latter company is liable (*Hooper v. L. & N. W. Ry. Co.*, 29 W. R. 241; 50 L. J. Q. B. 103, where *Mytton v. Midl. Ry. Co.*, 4 H. & N. 615, was considered overruled by *Foulkes v. Metr. Dist. Ry. Co.*, 5 C. P. D. 157).

Where there is a written contract to carry to a particular station, parol evidence may be given of a further contract to carry to a station at a greater distance (*Malpas v. L. & S. W. Ry. Co.*, 36 L. J. C. P. 166; L. R. 1 C. P. 336).

Where a servant accepts goods in violation of the rules of the company, who carry such goods only under a special contract, the rules being known to the consignor, there is no contract between the company and the consignor (*Slim v. Gt. W. Ry. Co.*, 14 C. B. 647).

In the absence of special circumstances, the carrier's contract is with the person, in whom the property in the goods is vested.

Thus, where goods are delivered to a carrier for a purchaser under a valid contract for sale, the consignee is the proper person to sue the carrier, whether he has nominated him or not (*Dutton v. Solomonson*, 3 B. & P. 582).

This general rule may be varied by a special contract by the carrier, that he will be liable to the consignor (*Moore v. Wilson*, 1 T. R. 659; *Davis v. James*, 5 Burr. 2680; see *G. W. Ry. Co. v. Bagge & Co.*, 15 Q. B. D. 625).

If there is no valid contract between the consignor and consignee, the consignor is the person to sue, and the consignee cannot sue, though he may have appointed the carrier (*Coates v. Chaplin*, 2 G. & Dav. 552; 3 Q. B. 483; *Coombe v. Bristol & Exeter Ry. Co.*, 3 H. & N. 510).

Where the goods are sent on approval, the consignor is the person to sue (*Swain v. Shepherd*, 1 M. & Rob. 223).

A bailee of goods forwarding them by a carrier may maintain an action against the carrier, as he has a special property in the goods (*Freeman v. Birch*, 1 Nev. & M. 420; 3 Q. B. 492, n.).

Where the goods are delivered to the carrier to be carried to a certain place for a consignee whose name is disclosed, the inference being that the contract of carriage is between the carrier and the consignee, the latter may direct them to be delivered at any place agreed upon between himself and the carrier (*L. & N. W. Ry. Co. v. Bartlett*, 7 H. & N. 400; 31 L. J. Ex. 92; *Cork Distilleries Co. v. Gt. S. & W. Ry. Co.*, L. R. 7 H. L. 269).

Where the contract to carry is with A., it is no answer to an action by him that compensation has been paid to B., who delivered the goods to the company (*Coombe v. Bristol & Exeter Ry. Co.*, 3 H. & N. 1).

A common carrier by land is responsible for all losses not occasioned by the act of God or of the Queen's enemies, or by the inherent vice of the thing carried, though such losses occur without any negligence on his part (*Oakley v. Port of Portsmouth & Ryde United Steam Packet Co.*, 25 L. J. Ex. 99; 11 Ex. 618; *Nugent v. Smith*, 1 C. P. D. 423).

It seems that a carrier by sea, whether a common carrier or not, in the absence of special agreement, undertakes to carry at his own absolute risk, the act of God or of the Queen's enemies alone excepted (see *Liver Alkali Co. v. Johnson*, L. R. 9 Ex. 338).

And a carrier by sea, whether common carrier or not, warrants the seaworthiness of his vessel at the time when the perils of the intended voyage commence (*Kopitoff v. Wilson*, 1 Q. B. D. 377; *Steel v. State Line Steamship Co.*, 3 App. C. 72; *Coln v. Davidson*, 2 Q. B. D. 455).

To be an act of God, an event must be one the happening of which could not have been reasonably expected. The fact that the event has happened before is only evidence to show that its recurrence might have been expected (*Nitrophosphate & Odam's Chemical Manure Co. v. London & St. Katherine Dock Co.*, 9 Ch. D. 503).

Loss from the inherent vice of the thing carried would include deterioration of

perishable articles, and also evaporation and leakage of liquids (*Hudson v. Bazendale*, 2 H. & N. 575. See *Ohrlaff v. Briscoell*, L. R. 1 P. C. 231).

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A railway company undertaking to carry live animals is subject to the ordinary carrier's liability with regard to them (*M'Manus v. Lancashire & Yorkshire Ry. Co.*, 4 H. & N. 327; 28 L. J. Ex. 358; *Harrison v. L. & B. Ry. Co.*, 2 B. & S. 122, 149; *Kendall v. L. & S. W. Ry. Co.*, L. R. 7 Ex. 373, pp. 374, 376).

Carriers of
animals.

In the case of animals, the carrier is not liable for an injury arising from the inherent vice of the animal. But this does not mean that the animal must be shown to be vicious in the ordinary sense. It is sufficient if, there being no negligence on the carrier's part and nothing extraordinary being shown to have happened, the animal is found injured owing to its own struggles (*Blower v. Gt. W. Ry. Co.*, L. R. 7 C. P. 655; *Kendall v. L. & S. W. Ry. Co.*, L. R. 7 Ex. 373; *Nugent v. Smith*, 1 C. P. D. 423).

Vice in case
of animals.

The carrier cannot be charged with negligence, if an animal escapes by reason of the insufficiency of a chain and collar, which is sent with it by the owner and appears to be sufficient (*Richardson v. N. E. Ry. Co.*, L. R. 7 C. P. 75).

The case, would, however, be different if the fastening could be seen to be insufficient (*Stuart v. Crawley*, 2 Stark. 323).

In *Richardson v. N. E. Ry. Co.*, *supra*, the company would probably, upon the facts, have been held liable, whether there was negligence or not, on the ground that the conditions upon which they undertook to carry the dog were not signed by the owner, and that therefore the ordinary carrier's liability attached. But the special case expressly found that the company were not common carriers of animals.

The company are subject to the ordinary liabilities of carriers with regard to the personal luggage of a passenger carried for hire, when the luggage is placed in a separate van or other place appropriated for the purpose (*Macrow v. Gt. W. Ry. Co.*, L. R. 6 Q. B. 612; *Cohen v. S. E. Ry. Co.*, 2 Ex. D. 253, 259).

Passengers'
luggage.

It appears to be immaterial by whom the fare is paid. Thus, a servant whose fare has been paid by his master can maintain an action for loss of luggage (*Marshall v. York, Newcastle, & Berwick Ry. Co.*, 21 L. J. C. P. 34; 16 Jur. 124; 11 C. B. 655. See *Austin v. Gt. W. Ry. Co.*, L. R. 2 Q. B. 442, p. 445).

Servant may
sue though
master took
ticket.

So an officer carried under contract with the Government may sue for the loss of his luggage through negligence (*Martin v. Gt. Indian Peninsular Ry. Co.*, L. R. 3 Ex. 9).

The liability is only to the passenger, whose property the luggage appears to be. Thus a person sending his luggage by his servant cannot maintain an action for its loss (*Becher v. Gt. E. Ry. Co.*, L. R. 5 Q. B. 241).

Person not
travelling
with the luggage
cannot
sue.
When liability
commences.

The liability of the company for passenger's luggage commences from the time when it is delivered to the servants of the company for the particular journey, though the train may not start for a considerable time (*Lovell v. L. & D. Ry. Co.*, 45 L. J. Q. B. 476; 34 L. T. N. S. 127).

The company are not justified in refusing to take charge of passengers' luggage as common carriers, because it is packed up in a shawl (*Munster v. S. E. Ry. Co.*, 27 L. J. C. P. 308; 4 C. B. N. S. 676).

The ordinary carrier's liability does not extend to luggage placed at the passenger's request in the carriage in which he intends to travel. The company are only liable for the loss of such luggage if there has been negligence (*Bergheim v. Gt. E. Ry. Co.*, 3 C. P. D. 221. See *Talley v. Gt. W. Ry. Co.*, L. R. 6 C. P. 44, overruling, so far as *contra*, *Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54).

Luggage
placed in
compartment
with passen-
ger.

But where luggage is entrusted to a porter to be placed in the railway carriage with the passenger, and is lost before it is placed in the carriage, the company is liable if the circumstances are such as to show that the luggage was entrusted to the porter for the purpose of the transit, and not to be taken charge of while the journey was suspended (*Bunch v. Gt. W. Ry. Co.*, 17 Q. B. D. 215. See *Welch v. L. & N. W. Ry. Co.*, 34 W. R. 166).

Luggage on
its way to or
from the car-
riage.

The same rule applies at the other end of the journey if luggage carried with the passenger is given to a porter to be taken to a cab and lost on the way (*Butcher v. L. & S. W. Ry. Co.*, 16 U. B. 13; *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839; *Leach v. S. E. Ry. Co.*, 34 L. T. 134. See *Bunch v. G. W. Ry. Co.*, 17 Q. B. D. 215).

If the passenger carries among his luggage merchandise, for which the company are entitled to charge, he carries it at his own risk (*Cahill v. L. & N. W. Ry. Co.*, 13 C. B. N. S. 818; 31 L. J. O. P. 271; *Belfast & Ballymena Ry. Co. v. Keys*, 9 H. L. 566).

Merchandise
carried as
luggage.

Possibly, if the company have notice that the passenger has with him goods which are not personal luggage, and choose to carry them, they would be responsible

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(see *Gt. N. Ry. Co. v. Shepherd*, 8 Ex. 20; 21 L. J. Ex. 286; *Cahill v. L. & N. W. Ry. Co.*, 13 C. B. N. S. 818; 31 L. J. C. P. 271).

On the other hand, if the passenger has notice, that the company carry merchandise only upon certain payments being made, and he is allowed to take a parcel which is obviously merchandise, he cannot maintain an action (*Belfast & Ballymena Ry. Co. v. Keys*, 9 H. L. 556).

Personal
luggage
defined.

Whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose of his journey, must be considered as personal luggage (*Macrow v. Gt. W. Ry. Co.*, L. R. 6 Q. B. 612, p. 622).

The following articles have been held not to be passenger's luggage:—Merchandise carried for sale (*Cahill v. L. & N. W. Ry. Co.*, 13 C. B. N. S. 818; 31 L. J. C. P. 271; *Gt. N. Ry. Co. v. Shepherd*, 8 Ex. 30; 21 L. J. Ex. 286; *Belfast & Ballymena Ry. Co. v. Keys*, 9 H. L. 556); deeds and money of a client carried by an attorney (*Phelps v. L. & N. W. Ry. Co.*, 19 C. B. N. S. 321; 34 L. J. C. P. 259); a spring horse (*Hudston v. Midland Ry. Co.*, L. R. 4 Q. B. 366); a quantity of sheets, blankets, and quilts, for the use of the passenger's household (*Macrow v. Gt. W. Ry. Co.*, L. R. 6 Q. B. 612); pencil sketches of an artist (*Mytton v. Midland Ry. Co.*, 28 L. J. Ex. 385).

It has recently been held in a county court that a hamper containing provisions intended as a present was personal luggage (*Case v. L. & S. W. Ry. Co.*, L. J. Jan. 3, 1880, p. 9. The decision seems to be inconsistent with the other authorities).

Empties.

Empties carried on the return journey by the company without any extra payment are, it would seem, carried with the ordinary carrier's liability, the charges made being presumed to cover the return journey (*Aldridge v. Gt. W. Ry. Co.*, 16 C. B. N. S. 582).

Where goods are delivered improperly packed, and they are damaged, the carrier is liable if the damage is only partly caused by the bad packing (*Higginbotham v. Gt. N. Ry. Co.*, 10 W. R. 358; 2 F. & F. 776).

Place for
delivery.

It is part of the duty of the carrier to provide a proper place for delivery, and he is liable for a loss arising from neglect to provide a proper place (*Rooth v. N. E. Ry. Co.*, L. R. 2 Ex. 173).

Misdelivery.

A carrier is liable for mis-delivery; but he is not liable if he acts in the usual course of business and in accordance with his instructions.

Thus, where A. fraudulently induces B. to send goods to a fictitious firm at a given address, and the carrier sends to the address notice of arrival, and delivers the goods upon the signature of the firm fraudulently made by A., the carriers are not liable (*M'Kean v. M'Ivor*, L. R. 6 Ex. 36).

The case would be different if there is anything to awake the carrier's suspicions (*Stephenson v. Hart*, 4 Bing. 476).

Notice of
arrival.

Where the carrier by mistake advises the consignee that certain goods have arrived when they have not in fact arrived, the carrier is not estopped from explaining the mistake, and cannot be made liable for the non-delivery of the goods (*Carr v. L. & N. W. Ry. Co.*, L. R. 10 C. B. 307).

But if the company issue two delivery orders in different forms relating to the same consignment, they will be estopped as against a holder for value from denying that there are two consignments (*Coventry v. G. E. Ry. Co.*, 11 Q. B. D. 776. See *Seton v. Lafone*, 19 Q. B. D. 68; *Lishman v. Christie*, 19 Q. B. D. 333).

Delivery
within reason-
able time.

In the absence of a special contract, the carrier is bound to deliver the goods within a reasonable time. He is not liable for delay caused by circumstances beyond his control, such as an accident due to the negligence of another company having running powers over the line (*Taylor v. G. N. Ry. Co.*, L. R. 1 C. P. 385).

Where delivery of rags packed wet was delayed, but the delay would not have injured the rags if they had been packed dry, the owner of the rags was held entitled to nominal damages only (*Baldwin v. L. C. & D. Ry. Co.*, 9 Q. B. D. 582).

A contract to carry by a particular train, which usually arrives at a certain hour, does not amount to a warranty that the train will so arrive, though the company is informed that the object of the sender requires that it should so arrive (*Lord v. Midland Ry. Co.*, L. R. 2 C. P. 339).

Unreasonable
delay.

But the fact that a train arrives several hours after the proper time is *prima facie* evidence of unreasonable delay in carrying goods, and requires explanation from the company (*Roberts v. Midland Ry. Co.*, 25 W. R. 323).

It is a question of fact for the jury whether upon the whole circumstances of the case there has been unreasonable delay.

If the ordinary course of conveyance is departed from, owing to the negligence of a servant, this would be evidence of unreasonable delay (*Wren v. Eastern Counties Ry. Co.*, 1 L. T. N. S. 5).

The jury will not be directed that the company are bound to forward cattle only by ordinary trains (*Donohoe v. L. & N. W. Ry. Co.*, 1 R. 1 C. L. 304).

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The carrier undertakes to carry by the route ordinarily adopted in the usual course of business, though that route may not be the shortest (*Hales v. L. & N. W. Ry. Co.*, 4 B. & S. 66; 32 L. J. Q. B. 292).

Mode of
carriage.

The mere fact, that the goods have not arrived as usual, because the company have altered their time-tables without notice to the consignor, would not be evidence of unreasonable delay (*Bollands v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 15 Ir. C. L. 560).

It may be noticed here, that a servant of the company employed to receive and forward goods has been held to have authority to contract to forward goods by a particular train, notwithstanding the instructions he may have received from the company (*Anderson v. Chester & Holyhead Ry. Co.*, 4 Ir. C. L. 435; *Page v. G. N. Ry. Co.*, 1 R. 2 C. L. 228).

An unpaid vendor has the right of stopping the goods as long as they are in transitu, in the event of the vendee's insolvency.

Stoppage
in transitu.

Where the goods are delivered to a carrier as such, the right of stoppage continues as long as the goods are in his possession as carrier, whether the carrier is nominated by the purchaser or not, and whether the destination of the goods is known by the vendor or not (*Ex parte Rosevear China Clay Co.*; *In re Cock*, 48 L. J. Ch. 100; *Ex parte Cooper*; *In re MacLaren*, 11 Ch. D. 68; *Bethell v. Clark*, 19 Q. B. D. 553).

Right lasts as
long as car-
riage lasts.

The fact that the goods are carried to their destination and there warehoused by the carrier or his agent, does not defeat the right of stoppage, if there is nothing to show that the carrier or his agent has become the agent of the purchaser (*Ex parte Barrow*, *In re Worsdell*, 6 Ch. D. 783).

The right of stoppage is gone, when the transit prescribed by the vendor is at an end and the goods have been delivered to the purchaser or his agent, whether they have reached their ultimate destination or not (*Ex parte Gibbs*, *In re Whitworth*, 1 Ch. D. 101; *Kendal v. Marshall, Stevens & Co.*, 11 Q. B. D. 356; *Ex parte Miles*, *In re Isaacs*, 15 Q. B. D. 39. See *Merchant Banking Co. of London v. Phoenix Bessemer Steel Co.*, 5 Ch. D. 205).

Where right
of stoppage
ceases.

Delivery upon a ship of the purchaser, whether a general ship or a ship employed for the purpose, is delivery to the purchaser (*Schotsmans v. Lancashire & Yorkshire Ry. Co.*, 2 Ch. 332).

Delivery by the carrier of part of the goods is not to be taken as more than a delivery of that part (*Bolton v. Lancashire & Yorkshire Ry. Co.*, L. R. 1 C. P. 431; *Ex parte Cooper*, *In re McLaren*, 11 Ch. D. 68).

Delivery of
part of goods.

Where the purchaser refuses the goods when delivered to him, the right of stoppage remains (*Bolton v. Lancashire & Yorkshire Ry. Co.*, L. R. 1 C. P. 431).

The right of stoppage over the goods is gone, when the purchaser has transferred the property in the goods to a *bond fide* purchaser for good consideration, whether such consideration be past or not (*Leask v. Scott*, 2 Q. B. D. 376).

Transfer of
property in
goods.

But if the original vendor gives a valid notice to stop during the transit, though after the sale of the goods to a sub-purchaser, he will be entitled to be paid out of the unpaid purchase-money payable by the sub-purchaser (*Ex parte Golding Davis & Co.*, *In re Knight*, 13 Ch. D. 629; *Kemp v. Falk*, 7 App. C. 573).

The carrier's liability as carrier ceases when the contract for carriage has been performed.

End of car-
rier's liability.

If the goods are to be delivered at the consignee's address, and they are refused at that address, the liability as carrier ceases (*Heugh v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 51).

In such a case, there is no general rule requiring the carrier to give notice of refusal to the consignor, he is only bound to do what is reasonable under the circumstances (*Hudson v. Barendale*, 27 L. J. Ex. 93; 2 H. & N. 575).

Notice of
refusal.

It would seem that where a parcel is detained because the consignee refuses to pay the carrier's charges, the parcel should be kept for a reasonable time at the place of delivery (see *Crouch v. G. W. Ry. Co.*, 27 L. J. Ex. 345; 3 H. & N. 183).

If the goods are to be delivered at a station, and taken away by the consignee, it would seem that the carrier's liability as carrier does not cease till the goods have reached their destination, and a reasonable time to remove them has been given to the consignee after notice of their arrival (see *Bourne v. Galliffe*, 11 C. & F. 45; *Mitchell v. Lancashire & Yorkshire Ry. Co.*, L. R. 10 Q. B. 256, 263; *Bradshaw v. Irish N. W. Ry. Co.*, 1 R. 7 C. L. 252; *Patscheider v. Gt. W. Ry. Co.*, 3 Ex. D. 153; *Chapman v. Gt. W. Ry. Co.*, 5 Q. B. D. 278).

Reasonable
time allowed
to remove the
goods.

If the carrier is unable to give notice of arrival to the consignee, his liability as carrier is exchanged for that of warehouseman after a reasonable time for delivery has passed (*Chapman v. Gt. W. Ry. Co.*, 5 Q. B. D. 278).

If the servant of the consignee, being unable to drive away cattle, has them put

Cattle put
into pens.

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into pens by the company's servants, the company's liability as carriers is it seems then at an end (*Shepherd v. Bristol & Exeter Ry. Co.*, L. R. 3 Ex. 189).

The company are only bound to deliver passengers' luggage on the platform, a reasonable time being allowed the owner to take it away. If, however, they provide porters to carry it to the vehicle which takes it away, the liability as carriers lasts till the porters have performed their duty (*Patscheider v. Gt. W. Ry. Co.*, 3 Ex. D. 153; *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839; 18 L. J. C. P. 251; *Bunch v. Gt. W. Ry. Co.*, 17 Q. B. D. 215).

If the porter takes charge of the luggage while the owner goes away, intending to send for the luggage, the liability of the company is at an end (*Hodkinson v. L. & N. W. Ry. Co.*, 14 Q. B. D. 228).

Liability as
bailees.

It would seem that where the company carry the goods to their destination, and the owner does not, within a reasonable time, take them, so that the company are forced to keep them, the company are, nevertheless, liable as bailees, and are bound to take ordinary and reasonable care of them (see *Mitchell v. Lancashire & Yorkshire Ry. Co.*, L. R. 10 Q. B. 266; *Heugh v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 51).

Obligation of
warehouse-
men.

The obligation of the company as warehousemen is to take proper care that the goods are safely kept from loss or injury (*Coggs v. Bernard*, 2 Ld. Raym. 909; 1 Sm. L. C. 188).

Warranty of
safety of
warehouse.

There is no warranty on the part of a warehouseman, that the place where the goods are kept, is absolutely safe. The obligation is only to provide a place reasonably safe. If, therefore, a building has been erected by a competent contractor, and the warehouseman has no notice of any defect, he is not liable for injury to goods warehoused there, arising from the contractor's negligence (*Searle v. Laverick*, L. R. 9 Q. B. 122).

If a warehouseman agrees to warehouse goods at one place, and sends them to another, he must take the consequences of any injury to the goods, whether by the act of God or otherwise (*Lilley v. Doubleday*, 44 L. T. 814; 51 L. J. Q. B. 310).

After the company have become bailees, they are not liable for a misdelivery as such, but it is a question for the jury, whether they have exercised reasonable care (*Heugh v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 51).

Unauthorized
dealing with
goods.

In such cases it would seem that if the carrier, having become a bailee, does an unauthorized act, with the *bond fide* intention of restoring the goods to the owner, he would be liable (*Hiort v. Bott*, L. R. 9 Ex. 86).

Conversion.

A *bond fide* delivery to a person, whom the bailee knows not to be authorized to receive the goods, vests a right of action in the owner; and if the owner subsequently authorizes the carrier to deliver the goods to the person to whom they have in fact been already delivered, an action may, nevertheless, be maintained against the carrier, but nominal damages only are recoverable (*Hiort v. L. & N. W. Ry. Co.*, 4 Ex. D. 188).

As to the measure of damages recoverable in an action for conversion, see *Johnson v. Lancashire & Yorkshire Ry. Co.*, 3 C. P. D. 499.

Special con-
tract of bail-
ment.

The bailor and bailee may agree that the goods shall be deposited on other terms than those implied by law.

Cloak-room
ticket.

Upon the question whether a cloak-room ticket with the usual conditions exonerating the company from liability applies only to luggage actually placed in the cloak-room, or extends to luggage wherever it may be warehoused by the company, see *Harris v. Gt. W. Ry. Co.*, 1 Q. B. D. 515.

Re-delivery
by bailees.

The company is bound to re-deliver goods warehoused with them, in the absence of any special conditions, within a reasonable time after a reasonable demand. It would be a question for the jury whether a demand to have parcels deposited in the cloak-room delivered out on Sunday is reasonable (*Stallard v. Gt. W. Ry. Co.*, 31 L. J. Q. B. 137; 2 B. & S. 419).

Where a notice is sent to the consignee, that goods have arrived and will be held henceforth by the company as bailees on certain terms, and the consignee takes away part of the goods and leaves the rest, he must be taken to have consented to the terms imposed by the company (*Mitchell v. Lancashire and Yorkshire Ry. Co.*, L. R. 10 Q. B. 256).

Goods at
owner's sole
risk.

A notice to the consignee that goods have reached their destination and are held by the company not as carriers but at the owner's sole risk, subject to the usual warehouse charges, will not absolve the company from the liability to take ordinary and reasonable care (*Mitchell v. Lancashire & Yorkshire Ry. Co.*, L. R. 10 Q. B. 256).

Failure to
take delivery.

Where a consignee fails to take delivery of a horse, proper expenses incurred by the company in putting the horse out to livery may be recovered by the company from the consignee (*Gt. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132).

Damages for
breach of con-
tract to carry
goods.

The damages recoverable for breach of a contract to carry goods must be such as may be reasonably supposed to have been in the contemplation of the parties at the

time they made the contract, as the probable result of the breach of it (*Horne v. Midland Ry. Co.*, L. R. 8 C. P. 131, p. 137).

Thus, where the goods are to be applied to a particular object not known to the company, damages arising from failure of the object cannot be recovered (*Hadley v. Bazendale*, 9 Ex. 341; 23 L. J. Ex. 179; *Hales v. L. & N. W. Ry. Co.*, 4 B. & S. 66).

Nor can the owner recover damages he suffers by reason of the failure of a contract with a third person to whom he has sold the goods (*Horne v. Midland Ry. Co.*, L. R. 8 C. P. 131; *Thol v. Henderson*, 8 Q. B. D. 467).

Nor profits which would have been made on sales by the plaintiff's traveller (*Gt. W. Ry. Co. v. Redmayne*, L. R. 1 C. P. 329).

Nor hotel expenses incurred in waiting for the goods (*Woodger v. Gt. W. Ry. Co.*, L. R. 2 C. P. 318; 36 L. J. C. P. 177).

But he is entitled to his personal expenses in inquiring for the goods (*Hales v. L. & N. W. Ry. Co.*, 4 B. & S. 66; 32 L. J. Q. B. 292).

Where the company failed to provide horse boxes, and the horses were sent by road, and, being in bad condition, were injured by the journey, it was held that the measure of damages was the deterioration which the horses if in ordinary condition would have suffered, and the time and labour expended on the road (*Waller v. Mid. Gt. W. Ry. (Ir.) Co.*, 4 L. R. Ir. 376).

Where the company undertake to carry goods in waggons of a certain kind, and the consignor does not deliver the goods to the company because the waggons are not provided, but sells them on the spot, he cannot recover the difference between the price at the place where they were sold and the place to which they were to have been carried, there being nothing to show that the goods might not have been sent on by other means (*Irvine v. Midland & Gt. W. Ry. (Ir.) Co.*, 6 L. R. Ir. 55).

In an action for the loss of goods, the damages are, as a rule, the market value at the time and place where they ought to have been delivered.

The fact that the consignee has sold the goods at less than the market price is not to be taken into account (*Rodocanachi v. Milburn*, 18 Q. B. D. 67).

If there is no market value, the price at the place of manufacture must be taken as the measure, together with the cost of carriage, and a reasonable sum for importer's profit (*Rice v. Bazendale*, 30 L. J. Ex. 371; 7 H. & N. 96; *O'Hanlan v. Gt. W. Ry. Co.*, 34 L. J. Q. B. 154; 6 B. & S. 484).

If this test does not apply, the value must be taken to be the price at which the owner has actually sold them under a contract (see *Frane v. Gaudet*, L. R. 6 Q. B. 199); or the price at which the best substitute for the goods could be supplied (*Hinds v. Liddell*, L. R. 10 Q. B. 265).

In the case of samples, the owner may recover their value to him at the time when they ought to have arrived (*Schulze v. G. E. Ry. Co.*, 19 Q. B. D. 30).

It appears not to be clearly settled whether where there has been delay in delivery, and the market price has fallen in the interval between the time when the goods ought to have been delivered and the time when they are delivered, the difference in price can be recovered. In the case of carriage by sea, such damages cannot be recovered, whether the loss arises from breach of contract or from a tort, such as a collision at sea (*The Parana*, 1 P. D. 452; 2 P. D. 118; *The Notting Hill*, 9 P. D. 105).

On the other hand, in the case of land carriage, the authorities appear to show that damages for depreciation of market price can be recovered (*Wilson v. Lancashire and Yorkshire Ry. Co.*, 9 C. B. N. S. 632; *Collard v. S. E. Ry. Co.*, 7 H. & N. 79; 30 L. J. Ex. 393. See *Horne v. Midland Ry. Co.*, L. R. 7 C. P. 583; *ib.* 8 C. P. 131; 41 L. J. C. P. 264; 42 *ib.* 59. *Le Printur v. S. E. Ry. Co.*, 2 L. T. N. S. 170, appears to be inconsistent with the authorities above cited; and see *Haves v. S. E. Ry. Co.*, 54 L. T. 514).

Where the company enter into an independent contract with a carrier to carry goods which are lost, the company are not liable for the costs of an action to recover the goods brought by the owner against the carrier (*Bazendale v. L. C. & D. Ry. Co.*, L. R. 10 Ex. 36; 44 L. J. Ex. 20).

Where the object for which the goods are forwarded is expressly brought to the notice of the company, or can reasonably be inferred by them, they are liable for damages naturally resulting from failure of the object (*Simpson v. L. & N. W. Ry. Co.*, 1 Q. B. D. 274).

Such damages include damages for loss of profit on a sub-sale to a purchaser, and a sum for damages recovered by the sub-purchaser for breach of contract which may be the sum actually recovered (*Elbinger Actien Gesellschaft v. Armstrong*, L. R. 9 Q. B. 473; *Gribert Borgnis v. Nugent*, 15 Q. B. D. 85; *Hamilton v. Magill*, 12 L. R. Ir. 186).

Notice that if the goods do not arrive in time they will be thrown upon the owner's hands, is not such a notice of a lucrative contract by the owner as to enable

8 Vict. c. 90,
s. 89.

Special
damage not
recoverable.

Loss of
contract.

Profit on re-
sales.

Hotel
expenses.

Personal
expenses.

Damages for
loss of goods
are the market
value,
or cost of
manufacture,

or price at
which they
are sold,

or price of
best substi-
tute.

Damages for
depreciation
of market.

When special
damage can
be recovered.

8 Vict. c. 80, him to recover his loss upon the contract (*Horne v. Midland Ry. Co.*, L. R. 8 C. P. s. 89, 131).

Labelling goods as "Traveller's goods—deliver immediately," is not notice to the company of the purpose for which they are wanted, so as to enable the consignor to recover damages for the detention of a traveller (*Candy v. Midland Ry. Co.*, 38 L. T. N. S. 226; see *Jameson v. Midl. Ry. Co.*, 49 L. T. 426).

A mere general knowledge that goods were bought for re-sale, will not entitle the owner to damages for loss of profit on a particular contract (*Thol v. Henderson*, 46 L. T. 483).

An action to recover compensation for goods damaged through negligence is founded on contract within the County Court Act, 1867, and, therefore, if the plaintiff sues in a superior court, and recovers less than 20l., he is not entitled to costs (*Baylis v. Lindolt*, L. R. 8 C. P. 345; *Fleming v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 4 Q. B. D. 81; 39 L. T. N. S. 555; 27 W. R. 481).

On the other hand, an action against a carrier for delivering goods to a consignee after the consignor has exercised his right of stoppage *in transitu* is founded in tort (*Pontifex v. Midland Ry. Co.*, 25 W. R. 215; 36 L. T. N. S. 716; 3 Q. B. D. 23).

There is nothing to prevent the company from making such conditions as they please with regard to the carriage of passengers.

The question how far a person has notice of conditions printed upon or referred to in a ticket issued to him, cannot upon the cases be considered as settled. The rule, however, to which the decisions tend may be said to be as follows:—

A person taking a ticket has notice of conditions appearing on the face of the ticket, or referred to thereon, and he is bound by such conditions so far as they are legal, whether he actually reads them or not (see *Watkins v. Rymill*, 10 Q. B. D. 178).

The decided cases appear to go to this:—

Conditions on face of ticket. 1. Conditions actually printed on the face of the ticket are binding, whether the passenger reads them or not (*Zunz v. S. E. Ry. Co.*, L. R. 4 Q. B. 539; but see *Henderson v. Stevenson*, L. R. 2 H. L. Sc. 470, 477).

Conditions inside cover of a book of coupons. 2. If the ticket is in the form of a book with coupons, the passenger must be taken to have notice of conditions inside the cover though not referred to on the cover (*Burke v. S. E. Ry. Co.*, 5 C. P. D. 1).

"See conditions on back." 3. If the ticket on the face of it states that there are "conditions" on the other side, or if the passenger, in fact, knows that there are conditions on the other side, he is bound by them whether he reads them or not (*Harris v. Gt. W. Ry. Co.*, 1 Q. B. D. 515; *Duff v. Gt. N. Ry. Co.*, 4 L. R. Ir. 178; see, too, *Stewart v. N. W. Ry. Co.*, 3 H. & C. 135; 33 L. J. Ex. 199; *Le Blanche v. L. & N. W. Ry. Co.*, 1 C. P. D. 286. See *Van Toll v. S. E. Ry. Co.*, 12 C. B. N. S. 75; 31 L. J. C. P. 241).

Ticket complete on face—conditions on back. 4. On the other hand, where the ticket is complete on the face of it, and contains no reference to anything, a passenger who is shown, in fact, not to have been aware of conditions on the back, is not bound by them (*Henderson v. Stevenson*, L. R. 2 H. L. Sc. 470. See *Lewis v. M'Kee*, L. R. 4 Ex. 58. *Johnson v. Gt. Southern & Western Ry. Co.*, 1 R. 9 C. L. 108, is inconsistent with *Henderson v. Stevenson*).

"See back." 5. If the ticket on the face of it merely contains the words "see back," and the passenger does not know or believe that any conditions are referred to or are written on the back, it would appear to be a question for the jury, whether the company has done everything reasonably necessary to bring the conditions to the passenger's notice (see *Parker v. S. E. Ry. Co.*, 2 C. P. D. 416. It is difficult to reconcile *Burke's case* above cited with this decision of the Court of Appeal, and in all probability the views of Bramwell, L. J., see 2 C. P. D. 426, will be those ultimately adopted; see *Watkins v. Rymill*, 10 Q. B. D. 178).

Contract contained in the ticket. A person taking a ticket from A. to B. is not entitled to proceed from A. to B. and thence on to C. without paying the fare from B. to C., though the through fare from A. to C. may be the same as that from A. to B. (*Gt. W. Ry. Co. v. Pocock*, 28 W. R. 49).

A condition forfeiting a deposit of 10s., made by a season ticket-holder, in the event of his ticket not being returned on the day after it expires, is valid, and will be strictly construed and enforced against the ticket-holder (*Cooper v. L. & Br. Ry. Co.*, 4 Ex. D. 88).

No room in train. A person receiving a return ticket, authorizing him to return by the trains advertised for that purpose on any day not beyond 14 days from the date of the ticket, is entitled to maintain an action, if on presenting himself as a passenger by one of the advertised trains it is found too full to carry him (*Gt. N. Ry. Co. v. Hawcroft*, 21 L. J. Q. B. 178).

A contract to carry a person at a lower price "at his own risk" exonerates the company from liability for gross negligence, as well during the transit as while the person is going to or from the company's premises (*McCawley v. Furness Ry. Co.*, L. R. 8 Q. B. 57; 42 L. J. Q. B. 4; *Gallin v. L. & N. W. Ry. Co.*, L. R. 10 Q. B. 212; 44 L. J. Q. B. 89; *Duff v. Gt. N. Ry. Co.*, 4 L. R. 178).

8 Vict. c. 20,
s. 89.

Passenger
"at his own
risk."

Where the contract is to travel at the passenger's own risk to a station on the line of another company, the whole journey is made at the passenger's own risk, and he cannot recover against the second company for negligence on their line (*Hall v. N. E. Ry. Co.*, L. R. 10 Q. B. 437; 44 L. J. Q. B. 164).

The mere issue of a ticket from A. to B., apart from any conditions in the time-bills, implies no warranty that a train will start at the time at which the passenger is led to expect it, and if the train arrive too late to enable him to complete a through journey, he cannot recover damages (*Hurst v. Gt. W. Ry. Co.*, 19 C. B. N. S. 310; 34 L. J. C. P. 264; *Woodgate v. Gt. W. Ry. Co.*, 33 W. R. 429; 51 L. T. 826).

Issuing ticket
is not war-
ranty of train.

Where the company advertised a through train after they knew that the connecting train had been discontinued, it was held that a passenger who had started from London on the faith that he could continue his journey by the through train could maintain an action (*Denton v. Gt. N. Ry. Co.*, 5 E. & B. 860; 25 L. J. Q. B. 129; see *Woodgate v. Gt. W. Ry. Co.*, 33 W. R. 429; 51 L. T. 826).

Where the company promise every attention to secure punctuality, but declare that they will not be liable for any loss arising from delays or detention, the company would be liable for any unreasonable delay in the working of the particular train for which the passenger has taken a ticket, but not for delay occasioned by anything on the line, such as a block at a station or break-down of another train, &c. (*Le Blanche v. L. & N. W. Ry. Co.*, 1 C. P. D. 286; and see *McCartan v. N. E. Ry. Co.*, 54 L. J. Q. B. 411).

Liability for
unpunctu-
ality.

As to the damages recoverable for breach of a contract to carry the passenger, the general rule applies that the damages recoverable are only such as are the natural and direct consequences of the breach.

Damages for
breach of con-
tract to carry
passenger.

Thus a man compelled to sleep at a place short of his destination may recover his hotel bill (*Hamlin v. Gt. N. Ry. Co.*, 1 H. & N. 408; 26 L. J. Ex. 20).

Hotel bill.

And it seems he may recover something for the inconvenience of having to walk home (*Hobbs v. L. & S. W. Ry. Co.*, L. R. 10 Q. B. 111).

But he cannot recover anything for loss of custom because he misses appointments (*Hamlin v. Gt. N. Ry. Co.*, 1 H. & N. 408; 26 L. J. Ex. 20).

Loss of
custom.

It seems that he can recover his doctor's bill if he catches cold on his walk home (*Hobbs v. L. & S. W. Ry. Co.*, L. R. 10 Q. B. 111; not approved in *McMahon v. Field*, 7 Q. B. D. 591).

Doctor's bill.

The passenger will only be entitled to recover the cost of a special train or conveyance to his destination, if considering all the circumstances of the case a prudent person would have incurred such cost on his own account supposing there had been no company to look to (*Le Blanche v. L. & N. W. Ry. Co.*, 1 C. P. D. 286, p. 313).

Cost of a
special train.

As carriers of passengers the company are bound, in the absence of any special contract, to exercise due care and diligence, but they are not liable for accidents in the absence of negligence.

Duty of
carrier of
passengers.

They are liable for an accident arising from a defect in the carriages which can be detected by an ordinary reasonably proper and careful examination, but not for a latent defect which a careful and thorough examination would not disclose (*Readhead v. Midl. Ry. Co.*, L. R. 2 Q. B. 412; *ib.* 4 Q. B. 379).

Defect in
carriage.

The liability for injury to a passenger from negligence does not depend upon express contract. The rule appears to be that a passenger may maintain an action for the negligence of a company in whose train he lawfully is, whether he has actually received a ticket from that company or not. This principle is illustrated by the following cases:—

Negligence to
persons law-
fully using
the carriage.

A society charters a train from the company and issues tickets to its members. The company is liable to the individual members (*Skinner v. L. B. & S. C. Ry. Co.*, 6 Ex. 787).

A reporter travels with a non-transferable ticket issued to a different reporter with the name of the latter on it, but the company allow non-transferable tickets to be used by persons belonging to the same department. The company are liable (*Gt. N. Ry. Co. v. Harrison*, 10 Ex. 376).

A mother erroneously thinking her child is entitled to travel free takes a ticket for herself only. The company is liable for an injury to the child (*Austin v. Gt. W. Ry. Co.*, L. R. 2 Q. B. 442).

A passenger buys a ticket from company A. He gets into a train of company B., which have running powers over the A. line, and is injured: company B. is liable (*Foulkes v. Metr. Dist. Ry. Co.*, 4 C. P. D. 267; 5 C. P. D. 157).

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s. 89.

Contract
made with
servant.

Master may
sue for a tort.

Servant killed
on the spot.

Contract with
wife is con-
tract with
husband.

Action by
executor.

Passengers
identified with
carrier.

Liability of
contracting
company for
negligence of
a second
company.

Liability for
negligence of
others not
connected

Where a servant takes a ticket, no action can be maintained by his master against the carrying company for breach of the contract of carriage resulting in an injury to the servant and consequent loss of services (*Alton v. Midl. Ry. Co.*, 19 C. B. N. S. 213; 34 L. J. C. P. 292).

But the master may maintain an action for the negligence of a company not a party to the contract for carriage causing injury to the servant (*Berringer v. Gt. E. Ry. Co.*, 4 C. P. D. 163).

It has been held, that where the servant is killed on the spot the master cannot maintain an action for loss of services on the ground that *actio personalis moritur cum persona* (*Osborn v. Gillett*, L. R. 8 Ex. 88. This decision will probably be thought open to reconsideration on the grounds given by Bramwell, B., in his judgment).

It seems that before the Married Women's Property Act where the wife took the ticket and the husband was put to expense owing to an injury to his wife, he or his executor could recover (*Potter v. Metropolitan District Ry. Co.*, 30 L. T. N. S. 765).

Where a person, whom the company has contracted to carry, is injured and killed, and before his death medical expenses are incurred, and loss of business suffered, his executor can recover for this injury to the estate (*Bradshaw v. Lancashire & Yorkshire Ry. Co.*, L. R. 10 C. P. 189; 44 L. J. C. P. 148).

In *Leggott v. Gt. N. Ry. Co.*, 1 Q. B. D. 599; *Bradshaw v. Lancashire & Yorkshire Ry. Co.* is doubted, but it is supported by *Twycross v. Grant*, 4 C. P. D. 40. See *Phillips v. Homfray*, 24 Ch. D. 439).

The fact that damages have been recovered under Lord Campbell's Act will not estop the executor from bringing an action in respect of injury to the estate of the deceased accrued during his lifetime (*Leggott v. Gt. N. Ry. Co.*, 1 Q. B. D. 699).

If the right of action arises only owing to the wrongful act of the company, as, for instance, for running over a man at a level crossing, no action lies by the executor for loss of wages or medical expenses (*Pulling v. Gt. E. Ry. Co.*, 9 Q. B. D. 110).

The doctrine that a passenger is identified with his carrier, so that, for instance, a passenger in a train of company A. could not maintain an action against company B. for negligence, if there was contributory negligence on the part of company A., is overruled (*The Bernina*, 12 P. D. 58, overruling *Thorogood v. Bryan*, 8 C. B. 115; *Armstrong v. Lancashire & Yorkshire Ry. Co.*, L. R. 10 Ex. 47).

Where the company issue a ticket to a particular station and part of the journey has to be performed over the lines of another company, whether under an agreement for participation of profits, or under running powers, the first company are liable for an injury arising from the negligence of the second company in any matter incidental to the carriage of passengers (*Gt. W. Ry. Co. v. Blake*, 7 H. & N. 987; 31 L. J. Ex. 346; *Burton v. N. E. Ry. Co.*, L. R. 3 Q. B. 549; *Thomas v. Rhymney Ry. Co.*, L. R. 6 Q. B. 266).

Or the rule may perhaps be put in this way: a company agreeing to carry a passenger over the line of a second company are liable for all such negligence of the second company as they would have been liable for if the line of the second company had been their own.

The liability of the first company in such cases has been doubted, but the rule as above stated has been approved by the House of Lords in *Daniel v. Metr. Ry. Co.*, L. R. 5 H. L. 45.

The following cases are illustrations of this rule:—Company A. is referred to as the company issuing the ticket.

Company A. runs over the line of company B., company B., negligently leaves a carriage on the line. Company A. is liable (*Gt. W. Ry. Co. v. Blake*, 7 H. & N. 987; 31 L. J. Ex. 346).

Company B. negligently allows cattle to stray upon the line. Company A. is liable (*Buxton v. N. E. Ry. Co.*, L. R. 3 Q. B. 549).

Company B. negligently allows the train of company A. to proceed before the line is clear. Company A. is liable (*Thomas v. Rhymney Ry. Co.*, L. R. 6 Q. B. 266. See, too, *John v. Bacon*, L. R. 5 C. P. 437).

A fortiori the contracting company are liable if they neglect any precautions they ought to have taken to make the line of the second company safe (*Birkett v. Whitehaven Junc. Ry. Co.*, 4 H. & N. 730).

But a company carrying passengers are not liable for the negligence of others of whom they have no control in a matter altogether extraneous to the carriage of passengers.

B. has power to erect works over the company's line for his own purposes. By

B.'s negligence a girder falls upon a train of the company. The company is not liable (*Daniel v. Metr. Ry. Co.*, L. R. 5 H. L. 45).

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Company B. has running powers over the line of company A. Company B. in disobedience of signal at the junction runs into a train of company A., which is proceeding on the line of company A. Company A. is not liable (*Wright v. Midl. Ry. Co.*, L. R. 8 Ex. 137).

with carriage of passengers.

Where a person injured accepts a sum of money and gives a receipt in full satisfaction of the injury complained of, the receipt is not conclusive as to the cause in respect of which the money is stated to have been paid.

Receipt for all claims.

Where there is no fraud on the part of the company's servants in inducing the person injured to accept a sum in satisfaction of his injuries, it is a question for the jury whether the sum was intended to cover all the injuries which might eventually prove to have been sustained (*Roberts v. Eastern Counties Ry. Co.*, 1 F. & F. 460; *Rideal v. Gt. W. Ry. Co.*, 1 F. & F. 706; *Lee v. Lancashire & Yorkshire Ry. Co.*, 6 Ch. 527).

The damages recoverable by a person injured in a railway accident are in the first place, any actual pecuniary loss he may be shown to have suffered; secondly, if the injury is such as to disable him from following his profession, the jury should be directed to give such a sum as considering all the circumstances of the case will be a reasonable compensation. The fact that a person injured has a large private fortune ought not to go in diminution of the damages, but it should be taken into account in considering the probable duration of the professional income, the chances of retirement, and so forth (*Phillips v. L. & S. W. Ry. Co.*, 5 Q. B. D. 78; *Phillips v. L. & S. W. Ry. Co.*, 5 C. P. D. 280).

Principle on which damages should be assessed.

Damages may be given for loss of profits in business (*Bradshaw v. Lancashire & Yorkshire Ry. Co.*, L. R. 10 C. P. 189; 44 L. J. C. P. 148, overruling *Theobald v. Railway Passengers Assurance Co.*, 23 L. J. Ex. 249; 10 Ex. 45).

Loss of profits.

Probable increase of income may be taken into account (*Fair v. L. & N. W. Ry. Co.*, 21 L. T. 326).

The damages are not subject to any deduction on account of money received by the plaintiff from an insurance office under a policy of insurance against accident (*Bradburn v. Gt. W. Ry. Co.*, L. R. 10 Ex. 1; 44 L. J. Ex. 9).

As to damages recoverable under Lord Campbell's Act (9 & 10 Vict. c. 93) in the event of death, see notes to that Act, *post*.

Money received from insurance company not to be deducted.

A new trial may be granted for insufficiency of damages in an action for personal injuries as well as for excessive damages (*Phillips v. L. & S. W. Ry. Co.*, 48 L. J. Q. B. 693; 4 Q. B. D. 406; 5 Q. B. D. 78; *Beattie v. Moore*, 2 L. R. Ir. 28. See *Lambkin v. S. E. Ry. Co.*, 5 App. C. 352).

If the damages given are excessive the Court will refuse a new trial if the plaintiff consents to reduce the damages to what the Court thinks reasonable (*Belt v. Lawes*, 12 Q. B. D. 356).

In actions for negligence there must be evidence of negligence and evidence that the negligence proved, in fact, caused the injury complained of.

III. Railway accidents.

1. It is a question of law for the judge whether upon the facts shown there is any evidence from which the jury may reasonably draw the inference that there was negligence.

Judge must decide whether there is evidence of negligence.

2. It is also a question of law for the judge whether there is any evidence from which it can be reasonably inferred that the negligence proved was the cause of the injury complained of.

Negligence connected with injury.

3. In considering whether there is any evidence to connect the negligence with the accident, it is material to consider the conduct of the complaining party, and if upon the evidence it appears that the accident was to be entirely attributed to his own negligence, there is no case for the jury, as under such circumstances there is no evidence from which it can be reasonably inferred that the negligence of the company caused the accident (see the case put in *Dublin, Wicklow & Wexford Ry. Co. v. Slattery*, 3 App. C. 1155, at p. 1169).

An engine-driver negligently omits to whistle. A person seeing the train coming crosses the line for a wager. The evidence shows the accident to be caused entirely by the negligence of the person injured. There is, therefore, nothing to connect the negligence of the engine-driver with the accident, and no case for the jury.

4. It is a question of fact for the jury whether upon the evidence submitted to them the inference is to be made that there was negligence, and that such negligence, in fact, caused the injury.

Inference to be drawn from the evidence is for the jury.

5. It becomes material to consider whether there was contributory negligence on the part of the complaining person only where a case of negligence connected with the injury has in the opinion of the judge been raised for the jury.

The above propositions appear to be established by *Metr. Ry. Co. v. Jackson*, 3 App. C. 193; *Dublin, Wicklow & Wexford Ry. Co. v. Slattery*, 3 App. C. 1155).

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s. 89.

Contributory
negligence.

Infant guilty
of contribu-
tory negli-
gence.

Person found
injured on the
line.

Accident
while closing
door.

Choice of
dangers.

Inconveni-
ence.

Absence of
customary
precautions.

Precaution
required by
statute.

6. Whether there is any evidence of contributory negligence is a question for the judge.

7. When a case of negligence leading to the accident has been made out against the company, and there is evidence of contributory negligence on the part of the person injured, the whole case must be left to the jury (*Dublin, Wicklow & Wexford Ry. Co. v. Slattery*, 4 App. C. 1155).

8. A person, who by his negligence, contributes to bring about an accident may, nevertheless, maintain an action against the company, if notwithstanding his negligence, the accident might have been avoided by reasonable and proper care on the part of the company (*Radley v. L. & N. W. Ry. Co.*, 1 App. C. 754. See *Dublin, Wicklow & Wexford Ry. Co. v. Slattery*, 3 App. C., at p. 1207).

An infant may be guilty of contributory negligence (*Abbott v. Macfie*, 33 L. J. Ex. 177; 2 H. & C. 744; *Singleton v. Eastern Counties Ry. Co.*, 7 C. B. N. S. 287; *Waite v. N. E. Ry. Co.*, E. B. & E. 719).

Where an accident happens it must be shown that there was negligence on the part of the company which can reasonably be inferred to have caused the accident.

If the facts proved are equally consistent with negligence on the part of the company, or on the part of the person injured, there is no evidence to go to the jury.

This rule is illustrated by the following cases:—

A person is found injured upon the line; there is no evidence to show how he got there. The company are not liable (*Singleton v. Eastern Counties Ry. Co.*, 7 C. B. N. S. 287).

A child is found injured on the line at a level crossing. The company fail to maintain a stile at the level crossing. There is evidence to connect the negligence with the injury (*Williams v. Gt. W. Ry. Co.*, L. R. 9 Ex. 157).

A passenger in an over-crowded compartment gets up to prevent other persons entering. The train starts, and the passenger places his hand on the door to steady himself. A porter slams the door and crushes the passenger's thumb. The company are not liable (*Met. Ry. Co. v. Jackson*, 3 App. C. 193. In this case there was evidence of general negligence, but it was not shown that this negligence caused the accident).

The company negligently leave the door of a carriage unfastened. A passenger gets up to shut it and is injured. The company are not liable (*Adams v. Lanc. & Yorkshire Ry. Co.*, L. R. 4 C. P. 739. See L. R. 8 Q. B. 161. This is a case of accident pure and simple. There was no reason why the passenger should have fastened the door. If he chose to do so he did it at his own risk).

A person may be justified in jumping out of a carriage, if he is compelled to choose between a dangerous leap and the certainty of peril if he remains; but a mere alarm will not justify the leap or render the company liable for an injury received in consequence (*Jones v. Boyce*, 1 Stark. 495; *Kearney v. G. S. & W. Ry. Co.*, 18 L. R. Ir. 303).

As to whether where a person is exposed to inconvenience by the negligence of the company and is injured in doing an act not in itself dangerous to avoid the inconvenience, the company would be liable (see *Adams v. Lancashire & Yorkshire Ry. Co.*, L. R. 4 C. P. 739; *Gee v. Metr. Ry. Co.*, L. R. 8 Q. B. 161, p. 176; *Robson v. N. E. Ry. Co.*, L. R. 10 Q. B. 271, p. 274).

In such a case it would seem that there would be evidence to connect the negligence of the company with the accident.

Where the company take greater precautions than are required of them, the fact that on a particular occasion they omit the precaution, is not evidence of negligence (*Skelton v. L. & N. W. Ry. Co.*, L. R. 2 C. P. 631, p. 636; *Cliff v. Midl. Ry. Co.*, L. R. 5 Q. B. 258).

But the case would be different if the absence or presence of the additional precaution has come to be received as a signal of the absence or presence of danger (*Skelton v. L. & N. W. Ry. Co.*, *supra*).

The omission by the company to take any precautions which they are directed by statute to take, would it seems in all cases be evidence of negligence as against a person who can be shown to belong to the class for whose benefit the precautions were intended, and who is injured by the neglect of the company to take the precautions.

Thus, if the company are required to provide means of communication in passenger trains between the passengers and the servants of the company, the failure to provide such communication would be evidence of negligence in an action by a passenger injured thereby (*Blamires v. Lancashire & Yorkshire Ry. Co.*, L. R. 8 Ex. 283).

But the neglect of a statutory duty imposed in favour of a particular class of persons is not in itself evidence of negligence as against a person not a member of that class who suffers an injury by reason of that neglect.

Thus the neglect of the duty to fence, imposed on the company in favour of adjoining landowners, is not evidence of negligence in an action by a passenger (*Buxton v. N. E. Ry. Co.*, L. R. 3 Q. B. 549). 8 Viet. c. 20,
s. 89.

Upon similar principles where certain precautions are required by statute in the carriage of animals with a view to prevent the spread of contagious diseases a person whose cattle are washed overboard cannot maintain an action simply on the ground that the accident would not have happened if the statute had been obeyed (*Gorris v. Scott*, L. R. 9 Ex. 125).

In certain cases the very fact that an accident happens is evidence of negligence and throws upon the company the duty of showing that reasonable and proper care was taken. *Res ipsa loquitur.*

The rule is thus stated by Erle, C. J., "where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen, if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants that the accident arose from want of care" (*Scott v. London Dock Co.*, 3 H. & C. 596; 34 L. J. Ex. 220).

This principle would apply to cases of collision between two trains of the same company (*Skinner v. L. B. & S. C. Ry. Co.*, 5 Ex. 787; *Burke v. Manchester, &c. Ry. Co.*, 18 W. R. 694; *Bird v. Gt. N. Ry. Co.*, 28 L. J. Ex. 3). Collisions.

It also applies to cases of carriages running off the line if the company offers no explanation of the accident (*Carpue v. Brighton Ry. Co.*, 5 Q. B. 761; *Dawson v. Manchester, &c. Ry. Co.*, 5 L. T. N. S. 682; *Flannery v. Waterford & Limerick Ry. Co.*, L. R. 11 C. L. 30). Running off rails.

The fact of a brick falling from a bridge soon after a train has passed, the company being bound to keep the bridge in repair, is evidence of negligence (*Kearney v. L. B. & S. C. Ry. Co.*, L. R. 5 Q. B. 411; 6 *ib.* 759). Brick falling.

If a passenger getting up to look out of window causes the door to fly open and falls out, there is evidence that the door was carelessly fastened (*Gee v. Metr. Ry. Co.*, L. R. 8 Q. B. 161). Door flying open.

It is immaterial whether the accident happens while the train is moving or after it has stopped at a station (*Richard v. Gt. E. Ry. Co.*, 28 L. T. N. S. 711).

Where a window suddenly falls there is no evidence of negligence if it is not shown to be improperly constructed (*Murray v. Metr. Dist. Ry. Co.*, 27 L. T. N. S. 762). Window falling.

If a train negligently runs into another train on the line of a company the negligent train will be presumed to belong to the company though other companies have running powers over the line (*Ayles v. S. E. Ry. Co.*, L. R. 3 Ex. 146).

The company being bound to keep a level crossing over a highway fit for the passage of carriages there is evidence of negligence if a carriage is damaged because the rails are too high above the roadway (*Oliver v. N. E. Ry. Co.*, L. R. 9 Q. B. 409). Level crossings.

Where engines blow off steam with great noise at a level crossing over a highway there is evidence of negligence (*Manchester S. Junc. & Altrincham Ry. Co. v. Fullerton*, 14 C. B. N. S. 54). Blowing off steam.

The fact that the company have procured statutory powers to divert a level crossing, but have not exercised their powers is not evidence of neglect of any duty with regard to the level crossing (*Cliff v. Midl. Ry. Co.*, L. R. 5 Q. B. 258).

In the case of a level crossing, where a person on the crossing can see at the time whether trains are approaching or not, the fact that the company keeps no watchman there, or that the engine does not whistle, is not evidence of negligence (*Stubley v. L. & N. W. Ry. Co.*, L. R. 1 Ex. 13; *Skelton v. L. & N. W. Ry. Co.*, L. R. 2 C. P. 631; *Cliff v. Midl. Ry. Co.*, L. R. 5 Q. B. 258; but see *Thomson v. North British Ry. Co.*, 16 Nov. 1876, 4 Sc. Sess. Ca. 14th Series, 115). Duty of person crossing level crossing.

If under such circumstances a person crossing does not look up and down the line and is run over in consequence, it is his own fault and the company are not liable (*Davey v. L. & S. W. Ry. Co.*, 12 Q. B. D. 76. The authority, however, of this case is said to be shaken by *Wright v. Midl. Ry. Co.*, W. N. 1885. See *Brown v. Gt. W. Ry. Co.*, 52 L. T. 622. And see *Wright v. Gt. N. Ry. Co.*, 8 L. R. Ir. 267; *Clarke v. Midl. Ry. Co.*, 43 L. T. 381).

There is no English case which goes so far as to say, that where a train passing an ordinary level crossing by night has no lights, and does not whistle, and no other precautions are taken to warn a passenger, there would be no evidence of negligence. In *Ellis v. Gt. W. Ry. Co.* (L. R. 9 C. P. 551; 30 L. T. N. S. 874), which comes nearest to the point, the evidence as to lights and whistling was ambiguous and the plaintiff was moreover warned by a porter not to cross (see, too, *Gray v. N. E. Ry. Co.*, 48 L. T. 904). Failure to whistle.

On the other hand, if the line is so constructed that an approaching train cannot

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Invitation to
cross.

be seen owing to a curve or a tunnel, or, if owing to a fog the view of the line is obscured, the absence of any precautions on the part of the company to inform persons crossing whether the line was safe or not, would be evidence of negligence (*Ford v. S. W. Ry. Co.*, 2 F. & F. 730; *Bilbes v. L. B. & S. C. Ry. Co.*, 18 C. B. N. S. 684; 34 L. J. C. P. 182: explained in *Cliff v. Midl. Ry. Co.*, L. R. 6 Q. B. 268; *James v. Gt. W. Ry. Co.*, L. R. 2 C. P. 634, note).

If anything is done to suggest to the person crossing that the line is safe, or to put him off his guard, there is evidence of negligence, though he might have been able to see an approaching train if he had looked.

Thus, if the carriage gates across a level crossing are open, this amounts to an invitation to a foot passenger to cross, though there is no obligation as regards him to open or shut the gates (*N. E. Ry. Co. v. Wanless*, L. R. 7 H. L. 12; *Stapley v. L. B. & S. C. Ry. Co.*, L. R. 1 Ex. 21).

An invitation to come on given by a servant, whose duty it is to open and shut the gates, is within the scope of his authority, so as to make the company liable for an accident to a person following the invitation (*Lunt v. L. & N. W. Ry. Co.*, L. R. 1 Q. B. 277).

Level cross-
ings at sta-
tions.

With regard to persons crossing the line at a station, the company cannot be considered to have taken proper precautions by erecting notice boards warning persons not to cross the line, if in fact it is the custom for passengers to cross the line by a level crossing (*Rogers v. Rhymney Ry. Co.*, 26 L. T. N. S. 879; *Dublin, Wicklow & Wexford Ry. Co. v. Slattery*, 3 App. C. 1155).

In such cases it would seem if nothing is done to warn persons crossing of approaching trains, either by whistling or otherwise, there is evidence of negligence (*Cases, supra*).

Crossing line
where no level
crossing.

Where persons are in the habit of crossing the rails anywhere along the line there is no duty upon the company to provide for the protection of such persons (*Harrison v. N. E. Ry. Co.*, 22 W. R. 336; 29 L. T. N. S. 844).

The case may possibly be different where persons are in the habit of crossing the line at a particular place though there is no highway (*Barrett v. Midl. Ry. Co.*, 1 F. & F. 361).

Where a man is found killed at a level crossing, and there is no evidence as to how the accident was caused, the company cannot be held liable for negligence (*Wakelin v. L. & S. W. Ry. Co.*, 12 App. C. 41).

Cattle stray-
ing on the
line.

With regard to cattle straying on the line the rule is that the company are, as regards their passengers, bound to take reasonable precautions to keep cattle off the line, but they cannot be taken to warrant that no cattle shall come on the line (*Bunton v. N. E. Ry. Co.*, L. R. 3 Q. B. 549).

Private
crossing.

The company are bound to exercise some supervision even over a private crossing. If, therefore, the cattle get on to the line at a private crossing, and there is some evidence that the gates at the crossing are out of repair, there is evidence of negligence (*Chumberton v. Irish N. W. Ry. Co.*, 1 R. 3 C. L. 603; *Patchell v. Ir. N. W. Ry. Co.*, 1 R. 6 C. L. 117).

Defects in
trucks of third
persons.

With regard to accidents happening through defects in trucks belonging to third persons which the company are bound to forward, the company are bound to take reasonable care that the trucks are in a fit state to travel, and for that purpose to make a reasonable examination of the trucks.

The discovery of a defect in a truck does not impose upon the company the duty of making a more minute examination than would otherwise be necessary with a view to discover other defects, if the defect discovered is not of such a nature as to lead to the inference that it is connected with some undiscovered defect (*Richardson v. Gt. E. Ry. Co.*, 1 C. P. D. 342).

Stopping
short of or
overhooting
platform.

If some of the carriages are carried beyond or stop short of the platform and nothing is done by the company's servants or the passenger, and the passenger after waiting a reasonable time gets out and is injured, there is a direct conflict of cases as to whether there is any evidence of negligence to go to the jury.

Robson's and
Rose's case.

In *Robson v. N. E. Ry. Co.*, 2 Q. B. D. 85, and *Rose v. N. E. Ry. Co.*, 2 Ex. D. 249, it was held there was evidence of negligence.

But the authority of these cases is very much weakened by the fact, that some of the judges seem to have supposed, that *Bridges v. L. & N. W. Ry. Co.*, L. R. 7 H. L. 213, had decided, that the question whether there was evidence of negligence or not was for the jury, see 3 App. C. 199.

The cases of *Thompson v. Belfast, Holywood & Bangor Ry. Co.*, 1 R. 5 C. L. 517; *Nicholls v. Gt. Southern & Western Ry. Co.*, 1 R. 7 C. L. 40; 21 W. R. 387, decided in Ireland, are in accordance with *Robson's* Case and *Rose's* Case, *supra*.

Siner's case.

On the other hand, the case of *Siner v. Gt. W. Ry. Co.*, L. R. 3 Ex. 150, *ib.* 4 Ex. 117, a case in the Ex. Ch., and therefore of equal authority with *Rose's* Case and *Robson's* Case, decided that upon the simple facts stated above there was no evidence

of negligence to go to a jury, and the opinion of the Lord Chancellor (Earl Cairns), expressed in *Bridges v. N. London Ry. Co.*, L. R. 7 H. L., at p. 238, would seem to be in accordance with the view of the judges in *Siner's Case*. And the same view was taken in *Owen v. Gt. W. Ry. Co.*, 36 L. T. N. S. 850.

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The reasonable view would seem to be that a passenger who is able to see the risks of the spot where he will have to alight, and chooses to get out of his carriage without calling for assistance or requiring the train to draw up to the platform, does so at his own risk. If the spot were obviously dangerous and he chooses to alight, it seems clear that the company would not be liable for an accident, and it would be a strange result that the company should be liable where the spot presents no danger to an ordinary person (see *Harrold v. Gt. W. Ry. Co.*, 14 L. T. N. S. 441).

The passenger would seem to be in this dilemma. Either he knows that if he gets out unaided he runs a risk, and in that case he should call for assistance; if he does not he must be taken to alight at his own risk. Or, he thinks he can safely alight, and if he is hurt it is an accident pure and simple, for which no one should be liable.

In such a case an express invitation by an officer of the company to alight would be evidence of negligence if an accident happens (*Foy v. L. B. & S. C. Ry. Co.*, 18 C. B. N. S. 225).

Invitation to alight.

If the passenger calls for or shows a desire to obtain assistance, and no assistance is offered, it would probably be considered, that there is evidence of negligence if an accident happens to the passenger in alighting (see *Robson v. N. E. Ry. Co.*, L. R. 10 Q. B. 271; 2 Q. B. D. 35, which may be supported on this ground).

Calling for assistance.

If by reason of the darkness of the night or because the spot in question is in a tunnel the passenger cannot see the danger there may be in getting out, and he alights, either upon an express invitation from the company's servants, or after waiting a reasonable time, and an accident happens there is evidence of negligence (*Praeger v. Bristol & Exeter Ry. Co.*, 24 L. T. N. S. 105; *Cockle v. L. & S. E. Ry. Co.*, L. R. 7 C. P. 321; *Bridges v. N. London Ry. Co.*, L. R. 7 H. L. 213; *Waller v. L. B. & S. C. Ry. Co.*, L. R. 9 C. P. 126; *Gill v. Gt. E. Ry. Co.*, 26 L. T. N. S. 945).

Stopping train at dangerous place.

If the train is carried so far beyond the platform that a reasonable person would suppose that it must be backed, and a passenger in getting out is thrown down by reason of the train backing, there is no evidence of negligence of the company (*Lewis v. L. C. & D. Ry. Co.*, L. R. 9 Q. B. 66).

Sudden backing.

Merely calling out the name of the station would not it seems in itself be an invitation to alight. Clearly, if the station is called before the train has stopped, there cannot be said to be any invitation to alight. If the train has finally stopped, and the name of the station is called, it would be a question for the jury whether this was intended as an invitation to alight (*Lewis v. L. C. & D. Ry. Co.*, L. R. 9 Q. B. 66; *Bridges v. N. London Ry. Co.*, L. R. 7 H. L. 213).

Invitation to alight.

As to injuries from slamming doors, it seems that if the door is closed after a person is completely within the carriage though he may not be actually seated, and he happens to have his hand in the hinge there is no evidence of negligence (*Richardson v. Metr. Ry. Co.*, L. R. 3 C. P. 374, note; 37 L. J. C. P. 300; *Metr. Ry. Co. v. Jackson*, 3 App. C. 193; *Maddox v. L. C. & D. Ry. Co.*, 38 L. T. N. S. 458).

Finger-squeezing accidents.

On the other hand, if the door is closed before the passenger has time to get in there is evidence of negligence (*Coleman v. S. E. Ry. Co.*, 4 H. & C. 699; *Fordham v. Brighton Ry. Co.*, L. R. 3 C. P. 368; 4 ib. 619; 38 L. J. C. P. 324).

Where after an invitation to alight the train is jerked back because the break is loosed, and a passenger is injured there is evidence of negligence (*L. & N. W. Ry. Co. v. Hellawell*, 26 L. T. N. S. 557).

Sudden jerk.

The company are bound to keep their stations reasonably safe for their passengers.

Stations must be reasonably safe.

Thus the company would be liable for an injury to a passenger falling upon a piece of ice extending across the platform (*Shepperd v. Midl. Ry. Co.*, 25 L. T. N. S. 879; 20 W. R. 705).

Slippery platform.

Where an accident happens from something, which has for a long time been used with safety, the thing will *prima facie* be presumed to be proper.

Thus, where a person stumbles against a weighing machine in a usual place, there is no evidence of negligence (*Cornman v. Eastern Counties Ry. Co.*, 29 L. J. Ex. 94; 4 H. & N. 781).

Stumbling against an obstacle.

The same has been held in the case of an injury to a cow from a gate fastening (*Gt. W. Ry. Co. v. Davies*, 39 L. T. N. S. 475).

So where timber is secured on trucks by a chain, and getting loose, injures a passenger in a passing train, there is no evidence of negligence if timber is usually so secured, though a better way of securing it by stanchions may have recently been introduced (*Hanson v. Lancashire & Yorkshire Ry. Co.*, 20 W. R. 297).

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Falling down
steps.

Savage dog
in station.

Access to and
from station.

Bridge
leading to
station.

Injury to
guard looking
out of win-
dow.

IV. Liability
for negligence
of contractor.

Injuries
during con-
struction of
works.

Neglect of
precaution
required by
statute.

Power to dis-
miss incom-
petent workmen.
How far lia-
bility extends.

A person who, in search of urinals, which are lighted by a lamp, goes through an open door and falls down some steps, has no right of action (*Toomey v. L. B. & S. C. Ry. Co.*, 3 C. B. N. S. 146; 27 L. J. C. P. 39. See *Wilkinson v. Fairrie*, 32 L. J. Ex. 73; 1 H. & C. 633).

Where a plate of zinc fell from the roof of the station where a man was seen to be, it was held that there was no evidence of negligence, the man not being shown to be the servant of the company (*Welfare v. London & Brighton Ry. Co.*, L. R. 4 Q. B. 693).

The company are not liable for injuries done by a dog which happens to get into the station (*Smith v. Gt. E. Ry. Co.*, L. R. 2 C. P. 4).

The company are bound to provide reasonable means of access to and from their stations (see *John v. Bacon*, L. R. 5 C. P. 437).

Thus, if a bridge over which passengers are accustomed to pass is shown not to be reasonably safe the company are liable if an accident happens (*Longmore v. Gt. W. Ry. Co.*, 19 C. B. N. S. 183; 35 L. J. C. P. 136).

A bridge must be safe only for persons using it in the ordinary way, and not for children walking over it sideways, and not looking where they are going (*Lay v. Midl. Ry. Co.*, 30 L. T. N. S. 529).

A person who falls down properly constructed stairs leading from a station cannot maintain an action on the ground that less slippery materials might have been used (*Crafter v. Metr. Ry. Co.*, L. R. 1 C. P. 300).

The mere opinion expressed by witnesses that a bridge is dangerous is not evidence of negligence (*Rigg v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 12 Jur. N. S. 525; 14 W. R. 834).

Where passengers are allowed to cross the line by going behind a train, and a hamper is left in the way at the side of the line there is evidence of negligence (*Nicholson v. Lancashire & Yorkshire Ry. Co.*, 34 L. J. Ex. 84; 3 H. & C. 534).

A company is liable to the guard of a second company having running powers for injury to the guard from a post while looking out of window in performance of his duty (*Graham v. N. E. Ry. Co.*, 18 C. B. N. S. 229).

In an action against the company evidence of facts, tending to show that the plaintiff considered his case a bad one as well as evidence of actual admissions to that effect by the plaintiff is admissible (*Moriarty v. L. C. & D. Ry. Co.*, L. R. 5 Q. B. 314).

Although the company employ a competent contractor to construct works for them, they are liable for an injury caused because the works have been improperly carried out (*Grote v. Chester & Holyhead Ry. Co.*, 3 Ex. 251; *Burns v. Cork & Bandon Ry. Co.*, 13 Ir. C. L. 543; *Francis v. Cockrell*, L. R. 5 Q. B. 185).

With regard to injuries done during the construction of works which are under the control of an independent contractor, the cases appear to support the following rule:—

If the works are from their nature likely to be dangerous to persons lawfully using the land near the works, it is the duty of the person employing the contractor not only to give orders that preventive measures shall be taken, but also to see that the orders are carried out (*Ellis v. Sheffield Gas Co.*, 2 E. & B. 771; *Pickard v. Smith*, 10 C. B. N. S. 470; *Gray v. Pullen*, 5 B. & S. 970; 32 L. J. Q. B. 169; 34 *ib.* 265; *Bower v. Peate*, 1 Q. B. D. 321; *Dalton v. Angus*, 6 App. C. 740; *Hughes v. Percival*, 8 App. C. 443).

If there is an express statutory provision requiring the company to take certain precautions, the company would be liable if damage is caused because the precautions are not taken, though the works are in the hands of a contractor (*Hole v. Sittingbourne & Sheerness Ry. Co.*, 30 L. J. Ex. 81; 6 H. & C. 488; *Gray v. Pullen*, 34 L. J. Q. B. 265; 5 B. & S. 970, 981).

On the other hand, if the works, properly conducted, are not likely to be injurious to any one, the person employing the contractor is not liable for negligence on the part of the contractor or his servant (see *Pearson v. Cor*, 2 C. P. D. 369; *Knight v. Fox*, 20 L. J. Ex. 9; 5 Ex. 721; *Kiddle v. Lovett*, 16 Q. B. D. 605).

And this principle applies, though the company reserve power to dismiss incompetent workmen employed by the contractor (*Reedie v. L. & N. W. Ry. Co.*, 4 Ex. 244).

The company are liable for negligence to persons to whom an inducement or invitation is offered to come upon the premises of the company for the advantage of the company.

This principle would extend to an intending traveller (*Lancaster Canal Co. v. Parnaby*, 11 A. & E. 223; *Chapman v. Rothwill*, E. B. & E. 168; 27 L. J. Q. B. 316); a workman who goes to perform a contract with the company (*Indermaur v. Dames*, L. R. 2 C. P. 311; *Heaven v. Pender*, 11 Q. B. D. 503; *Elliott v. Hall*, 15 Q. B. D. 316); consignees assisting the servants of the company in unloading

their own goods with the consent of the company (*Holmes v. N. E. Ry. Co.*, L. R. 8 Vict. c. 20, 4 Ex. 255; *Wright v. L. & N. W. Ry. Co.*, 1 Q. B. D. 253). s. 89.

A person, however, going upon the premises of the company by invitation is bound to take reasonable precautions against a danger which is obvious, or of which he has notice. Thus, he cannot recover for an injury caused by a passing train to a horse which he has taken out of its harness (*Manchester, Sheffield & Lincolnshire Ry. Co. v. Woodcock*, 25 L. T. N. S. 335). Person invited to come.

It has been held that the workman of a contractor engaged in a dangerous employment, and continuing the employment after notice of the danger, cannot recover against the company if an accident happens (*Woodley v. Metr. District Ry. Co.*, 2 Ex. D. 384. Owing to the conflicting opinions of the judges, the case is not of great authority).

With regard to a bare licensee, it seems the company would be liable for an injury caused by something in the nature of a trap (see *Boleh v. Smith*, 7 H. & N. 736; 31 L. J. Ex. 201; *White v. France*, 2 C. P. D. 308. See *Parry v. Smith*, 4 C. P. D. 325). Barelicensees.

They would also be liable for a positive act of negligence, such as the carelessness of a porter in rolling a truck (*Tebbutt v. Bristol & Exeter Ry. Co.*, L. R. 6 Q. B. 73).

But they would not be liable for mere negligence (see *Hounsell v. Smith*, 7 C. B. N. S. 731; *Gautret v. Egerton*, L. R. 2 C. P. 371; *Collis v. Selden*, L. R. 3 C. P. 495; see *Batchelor v. Fortescue*, 11 Q. B. D. 474).

The principle of the cases above cited has been extended to public bodies exercising statutory powers for the public benefit, and not for purposes of profit. Rules apply to public bodies.

Such bodies are liable to a person using the works under their management upon payment of tolls for negligence, whether arising from acts of commission or omission (*Mersey Docks Trustees v. Gibbs*, L. R. 1 H. L. 93; *Coe v. Wise*, L. R. 1 Q. B. 711; *Borough of Bathurst v. Macpherson*, 4 App. C. 256; *Winch v. Conservators of Thames*, L. R. 9 C. P. 378; *Gilbert v. Corporation of Trinity House*, 17 Q. B. D. 795).

So local boards who, in some capacity other than that of surveyors of highways, place on the highway an object which becomes dangerous to persons using the highway, are liable for any injury caused thereby (*White v. Hindley Local Board*, L. R. 10 Q. B. 219; *Blackmore v. Vestry of Mile End*, 9 Q. B. D. 451; see *Moore v. Lambeth Waterworks Co.*, 16 Q. B. D. 462).

But a mere board of management, having no power to take tolls, would not be liable in such a case (*Forbes v. Lee Conservancy Board*, 4 Ex. D. 116).

The company gratuitously allowing a person to use machinery belonging to them are not liable for the negligent construction of the machinery, if they had no notice of the defect (*MacCarthy v. Young*, 30 L. J. Ex. 227; 6 H. & N. 329). Gratuitous bailees.

And even if they have notice of the defect, they are not liable for an injury to a third person who is injured while gratuitously assisting the person allowed to use the machinery (*Blackmore v. Bristol & Exeter Ry. Co.*, 27 L. J. Q. B. 167; 8 E. & B. 1035).

The liability of a master for injuries to a servant has been materially affected by the Employers' Liability Act, 1880. The Act will be found printed, *post*. It may be useful shortly to state the law as it stood before the Act was passed. V. Liability to servants.

As a general rule, a master is not liable to his servant for an injury caused by the ordinary risks of the servant's employment (*Priestley v. Fowler*, 3 M. & W. 1; *Dynen v. Leach*, 26 L. J. Ex. 221).

Thus, a servant undertaking certain work, and injured in the course of his employment, cannot maintain an action against the company on the ground that a larger staff of servants ought to have been employed (*Skipv v. E. Counties Ry. Co.*, 9 Ex. 223). Deficiency of staff.

The master is liable for an accident arising from the improper construction of a machine, where the master is aware of the defect but the servant is not (*Walling v. Oastler*, L. R. 6 Ex. 73; *Griffiths v. London & St. Katharine Docks Co.*, 13 Q. B. D. 259. See *M'Kinney v. Irish N. W. Ry. Co.*, 1 R. 2 C. L. 600). Improper construction of machinery.

Where a statute requires some precaution to be taken for the protection of a servant, the master is liable for an injury to a servant in consequence of the master's default, unless the servant knew the risk to which, in consequence of that default, he is exposed (*Britton v. Gt. W. Cotton Co.*, L. R. 7 Ex. 130). Neglect of statutory precaution.

A master is not liable to a servant for the negligence of a fellow workman, if there has been no negligence of the master in employing the fellow workman (*Wilson v. Merry*, L. R. 1 H. L. Sc. 326; *Lovegrove v. L. B. & S. C. Ry. Co.*, 16 C. B. N. S. 669; *M'Carthy v. British Shipowners' Co.*, 10 L. R. Ir. 384). Negligence of fellow servant.

All servants employed in furthering the same undertaking of the master, however different their actual employment, and whatever their relative position and authority may be, must be considered fellow workmen (*Morgan v. Vale of Neath Ry.* Who are fellow servants.

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Co., L. R. 1 Q. B. 149; *Wilson v. Merry*, L. R. 1 H. L. Sc. 326; *Lovell v. Howell*, 1 C. P. D. 181; *Waller v. S. E. Ry. Co.*, 2 H. & C. 102; 32 L. J. Ex. 205; *Lovegrove v. L. B. & S. C. Ry. Co.*, 33 L. J. C. P. 329; 16 C. B. N. S. 669; *Feltham v. England*, L. R. 2 Q. B. 33; *Howells v. Landore Steel Co.*, L. R. 10 Q. B. 62; *Allen v. New Gas Co.*, 1 Ex. D. 251; *Charles v. Taylor*, 3 C. P. D. 492).

Servant on his way to his work.

A servant being carried by the company to his work in pursuance of the contract of service, cannot make the company liable for an injury arising from negligence while being so carried (*Tunney v. Midland Ry. Co.*, L. R. 1 C. P. 291).

Person assisting servant as a volunteer.

A person voluntarily assisting a servant is in the position of a fellow servant (*Degg v. Midland Ry. Co.*, 1 H. & N. 773; 26 L. J. Ex. 171; *Potter v. Faulkner*, 1 B. & S. 800; 31 L. J. Q. B. 30. See *Wright v. L. & N. W. Ry. Co.*, 1 Q. B. D. 252).

No common employer.

The rule exempting the master from liability does not apply to cases where though there is a common employment there is no common employer.

Thus, it seems that where the servants of A. are engaged with the servants of B. in the performance of some joint duty, A. would be liable for the negligence of his servants to the servants of B. (*Abraham v. Reynolds*, 5 H. & N. 143).

But A. is not liable for the negligence of his servants to the servants of B. where A.'s servants, though paid by A., are acting under the control and in the service of B. (*Murray v. Currie*, L. R. 6 C. P. 24; *Rourke v. White Moss Colliery Co.*, 2 C. P. D. 205. And see *Wiggett v. Fox*, 25 L. J. Ex. 188; 11 Ex. 832, explained 5 H. & N. 149).

Joint staff at a station.

Where two companies employ a joint staff of servants at a station for certain purposes, each company is liable for the negligence of its servants to the servants of the other company in matters not connected with the joint purposes (see *Foss v. Lancashire & Yorkshire Ry. Co.*, 2 H. & N. 728; *Warburton v. Gt. W. Ry. Co.*, L. R. 2 Ex. 30; *Swainson v. N. E. Ry. Co.*, 3 Ex. D. 341; *Wiggett v. Fox*, 11 Ex. 832; 25 L. J. Ex. 188. See *Rourke v. White Moss Colliery Co.*, 2 C. P. D. 205).

Whether a workman is the servant of a contractor or of the person for whom the work is done is a question of fact. A person hired by the contractor but paid by the owner, and subject to dismissal by him, is the servant of the owner (*Wiggett v. Fox*, 11 Ex. 832; 25 L. J. Ex. 188; *Charles v. Taylor*, 3 C. P. D. 492).

Whether continuance of service after notice of danger is a bar to an action.

Where a person continues in his employment after notice of a peculiar danger, it is a question of fact whether in so doing he has been negligent or not. The fact that the servant continues his employment after notice of a danger is not in law a bar to the action, if it will otherwise lie; it is only evidence to prove contributory negligence on the part of the servant.

Thus, if he complains, and the master promises to take precautions, the servant may maintain an action (*Clarke v. Holmes*, 7 H. & N. 937; *Hoey v. Dublin & Belfast Junction Ry. Co.*, 1 R. 5 O. L. 206; *Rattray v. Cork & Macroom Ry. Co.*, 4 L. R. Ir. 386. And see, too, *Woodley v. Metr. District Ry. Co.*, 2 Ex. D. 384).

Power to vary tolls.

90. And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special Act contained, from time to time to alter or vary the tolls by the special Act authorised to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in

Tolls to be charged equally under like circumstances.

[See Railway and Canal Traffic Act, 1854 (17 & 18

favour of or against any particular company or person travelling upon or using the railway.

8 Vict. c. 20,
ss. 91, 92.

The portion of this section relating to equality of tolls applies only to goods passing between the same points of departure and arrival, and over no other part of the line (*Denaby Main Colliery Co. v. Manch., Sheff. & Linc. Ry. Co.*, 11 App. C. 97).

Vict. c. 31),
s. 2.

The words "goods of the same description" are used with reference to the question whether they are like or different for purposes of carriage. Thus, packed parcels, whatever their contents, are goods of the same description for the purposes of this section. And packed parcels sent by an intercepting carrier, and by a wholesale dealer, are for the purposes of this section goods carried under the same circumstances (*G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. 226).

Equal tolls.
Same goods,
same circumstances.

The fact that goods carried for a customer are to be shipped to certain ports to develop a new trade, or open up new markets, does not constitute a difference of circumstances so as to justify inequality of rates (*Denaby Main Colliery Co. v. Manch., Sheff. & Linc. Ry. Co.*, 11 App. C. 97).

If the company can carry at a less cost for one customer than for others they may make him allowances, and if they act in good faith they need not show that the allowances are adequately represented by the saving (*Denaby Main Colliery Co. v. Manch., Sheff. & Linc. Ry. Co.*, 11 App. C. 97).

Notwithstanding this section, the company may make a special charge for goods carried under a traffic agreement under section 87 (*Hull Barnsley &c. Ry. Co. v. Yorkshire & Derbyshire Coal & Iron Co.*, 18 Q. B. D. 761).

If the company make charges in contravention of this section, the overcharge can be recovered if paid under protest, and in ignorance of the facts (*Baxendale v. G. W. Ry. Co.*, 16 C. B. N. S. 137; *G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. 226; *Evershed v. L. & N. W. Ry. Co.*, 2 Q. B. D. 254, 268; 3 App. C. 1029, overruling *Garton v. Bristol & Exeter Ry. Co.*, 1 B. & S. 112).

Overcharges.

The amount to be recovered must be ascertained by calculating what quantity of goods was carried under the same circumstances, and over the same portion of the line at the higher rate at the time the lower rate was charged to another trader (*Denaby Main Colliery Co. v. Manch., Sheff. & Linc. Ry. Co.*, 11 App. C. 97).

An action lies for refusing to carry for a particular person on the same terms as for others in contravention of this section (*Crouch v. G. W. Ry. Co.*, 9 Ex. 566).

Refusal to
carry.

The cases upon undue preference by railway companies will be found discussed in the notes to section 2 of the Railway and Canal Traffic Act, 1854, *post*.

91. And whereas authority has been given by various Acts of Parliament to railway companies to demand tolls for the conveyance of passengers and goods and for other services over the fraction of a mile equal to the toll which they are authorised to demand for one mile; therefore, in cases in which any railway shall be amalgamated with any other adjoining railway or railways, such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

How tolls to
be calculated
where rail-
ways amalga-
mated.

92. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special Act authorised to demand; and upon payment of the tolls from time to time demandable all companies and persons shall be entitled to use the railway with engines and carriages properly constructed as by this and the special Act directed, subject nevertheless to the provisions and restrictions of the said Act of the sixth year of her present Majesty, intituled "An Act for the Better Regulation of Railways, and for the Conveyance of Troops," and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special Act conferred upon them.

Railway to be
free on pay-
ment of tolls.

5 & 6 Vict.
c. 55.

This section does not, it seems, give persons entitled to use the railway the right to use the stations as well (*Midland Ry. Co. v. Ambergate Ry. Co.*, 10 Hare, 359).

Use of
stations.

8 Vict. c. 20,
ss. 93—97.

An injunction to enforce the right given by this section would be useless unless accompanied by an order for the working of the signals by the railway company, and as that is a continuous act, and the Court cannot see to its performance, the injunction will not be granted (*Powell Duffryn Steam Coal Co. v. Tuff Vale Ry. Co.*, L. R. 9 Ch. 331; 43 L. J. Ch. 575).

For the construction of an Act giving two companies the joint use of a station, see *Shrewsbury & Birmingham Ry. Co. v. Stour Valley Ry. Co.*, 2 D. M. & G. 866.

List of tolls to
be exhibited
on a board.

93. A list of all the tolls authorised by the special Act to be taken, and which shall be exacted by the company, shall be published by the same being painted upon one toll board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

The tolls to be published under this section would appear to be the actual tolls in force for the time being, and not the maximum tolls authorised by the special Act (see *Gregon v. Potter*, 4 Ex. D. 142).

Where the company are authorised in certain cases to charge in addition to the prescribed tolls a reasonable charge for the expense of stopping, loading, and unloading, the charges for stopping, loading, and unloading, are not tolls requiring publication under this section (*Pryce v. Monmouthshire Canal & Ry. Co.*, 4 App. C. 197).

Milestones.

94. The company shall cause the length of the railway to be measured, and milestones, posts, or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of one quarter of a mile from each other, with numbers or marks inscribed thereon denoting such distances.

Tolls to be
taken only
whilst board
exhibited and
milestones
set up.

95. No tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited, or at which the milestones hereinbefore directed to be set up and maintained shall not be so set up and maintained; and if any person wilfully pull down, deface, or destroy any such board or milestone, he shall forfeit a sum not exceeding five pounds for every such offence.

See as to the corresponding clauses in the Railways Clauses Consolidation (Scotland) Act, *Scottish North Eastern Ry. Co. v. Anderson*, 1 Sc. Sess. Ca. (3rd series), 1056.

The tolls here referred to do not include charges made by the company for carrying passengers in the carriages of the company (*Brown v. Gl. W. Ry. Co.*, 9 Q. B. D. 744).

Tolls to be
paid as di-
rected by the
company.

96. The tolls shall be paid to such persons, and at such places upon or near to the railway, and in such manner and under such regulations, as the company shall, by notice to be annexed to the list of tolls, appoint.

In default of
payment of
tolls, goods,
&c. may be
detained and
sold.

97. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or, if the same shall have been removed from the premises of the company, to detain and sell any other carriages or goods within

such premises belonging to the party liable to pay such tolls, and out of the monies arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the monies arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto, or it shall be lawful for the company to recover any such tolls by action at law.

8 Vict. c. 20,
s. 98.

This section applies only to tolls due for the use of the line by persons conveying goods in their own carriages, and not to tolls or charges due for goods carried by the company as carriers (*Wallis v. L. & S. W. Ry. Co.*, L. R. 5 Ex. 62; 39 L. J. Ex. 57).

Under the first part of the section the company cannot detain a carriage for tolls on the goods carried in it (*North Central Wagon Co. v. Manchester, &c. Ry. Co.*, 35 Ch. D. 191).

The toll will include a charge for the use of the railway, and an additional charge for the supply of locomotive power if these charges are authorized by the special Act (*North Central Wagon Co. v. Manchester, Sheff. & Linc. Ry. Co.*, 32 Ch. D. 477).

Before a distress can be made, there must be a demand of the sum due for tolls. A demand of a gross sum which includes a sum for tolls not separately stated, will not justify a distress (*Field v. Newport, &c. Ry. Co.*, 27 L. J. Ex. 396; 3 H. & N. 409).

Presentation of a bill which has been given for carriage of goods and is dishonoured on presentation is not a demand for tolls within this section (*North v. L. & S. W. Ry. Co.*, 32 L. J. C. P. 156; 14 C. B. N. S. 132).

As to what amounts to "a demand," see *North British Ry. Co. v. Carter*, 15 July, 1870, 8 Macq. 998.

Notice that no more goods will be delivered unless tolls upon goods previously delivered are paid, followed by detention of goods in the possession of the company has been held equivalent to a distress (*Green v. St. Katharine's Dock Co.*, 19 L. J. Q. B. 53; 13 Jur. 1116).

A carrier has a particular lien upon the goods for the cost of their carriage, but no general lien for a balance of account (*Rushforth v. Hadfield*, 6 East, 519; 7 id. 224).

Carriers' lien.

A general lien may be given by express agreement; but even where there is such an agreement, the carrier will not be entitled to retain the goods of a limited company delivered to be carried after a winding-up order has been made for balances due from the company before the winding-up (*Wiltshire Iron Co. v. Gt. W. Ry. Co.*, L. R. 6 Q. B. 101, 776; but see *In re Llangennech Coal Co.*, W. N. 1887, 22; and see *Ex parte Gt. W. Ry. Co.*, *In re Bushell*, 22 Ch. D. 470).

Where a general lien is given the lien is not destroyed, because the consignee refuses to accept the goods (*Westfield v. Gt. W. Ry. Co.*, 52 L. J. Q. B. 276).

A carrier retaining goods by virtue of his lien is not entitled to make any charge for warehousing the goods (*British Empire Shipping Co. v. Somes*, E. B. & E. 353; 8 H. L. 338).

A lien does not authorise the sale of the goods over which the lien extends. If the goods are sold, the lien is waived, and the seller would be liable for the value of the goods, and cannot set off the amount of his lien (*Mulliner v. Florence*, 3 Q. B. D. 484).

98. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then

Account of
lading, &c. to
be given.

s Vict. c. 20, such owner or other person shall specify the respective numbers or
ss. 99—102. quantities thereof liable to each or any of such tolls.

Penalty for
not giving
account of
lading.

99. If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading, to such collector or other officer or servant of the company demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundred weight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundred weight, (as the case may be,) which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

Disputes as to
amount of
tolls charge-
able.

100. If any dispute arise concerning the amount of the tolls due to the company, or concerning the charges occasioned by any detention or sale thereof under the provisions herein or in the special Act contained, the same shall be settled by a justice; and it shall be lawful for the company in the meanwhile to detain the goods, or (if the case so require) the proceeds of the sale thereof.

Differences as
to weights,
&c.

101. If any difference arise between any toll collector or other officer or servant of the company and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if upon such measuring or examination such goods appear to be of greater weight or quantity or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay, the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than and of the same nature as shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner of or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention.

Toll collector
to be liable
for wrongful
detention of
goods.

102. If at any time it be made to appear to any justice, upon the complaint of the company, that any such detention, measuring, or examining of any carriage or goods, as hereinbefore mentioned,

was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector, and such justice shall issue his warrant accordingly.

8 Vict. c. 20,
s. 103.

103. If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

Penalty on passengers practising frauds on the company.

A person who buys from the original purchaser and travels with the return half of a return ticket upon which is printed "not transferable," commits an offence within this section (*Langdon v. Howells*, 4 Q. B. D. 337).

Return ticket not transferable.

"Without having paid his fare" means the fare for the class by which the passenger travels. A passenger who with a third class ticket travels second class, with intent to defraud, is liable to be convicted under this section (*Gillingham v. Walker*, 44 L. T. 715; 29 W. R. 896).

A bye-law making any of the acts within this section offences irrespective of fraud is void, as the section makes them offences only when there is a fraudulent intent (*Dearden v. Townsend*, L. R. 1 Q. B. 10; *Saunders v. S. E. Ry. Co.*, 5 Q. B. D. 456; see *L. & B. Ry. Co. v. Watson*, 3 C. P. D. 429; 4 ib. 118; *Bentham v. Hoyle*, 3 Q. B. D. 289; *Dyson v. L. & N. W. Ry. Co.*, 7 Q. B. D. 32).

Bye-laws.

A bye-law, therefore, imposing a penalty for travelling without a ticket simply, is bad as against a traveller who is free from fraudulent intent, and it seems also as against a traveller guilty of fraudulent intent (*L. & B. Ry. Co. v. Watson*, 3 C. P. D. 429. See 4 C. P. D. 118; *Dyson v. L. & N. W. Ry. Co.*, 7 Q. B. D. 32).

Penalty for travelling without ticket.

It would seem that the company cannot throw the burden of proving absence of fraud upon the traveller (see *Bentham v. Hoyle*, 3 Q. B. D. 289, 292; 47 L. J. M. C. 51; *Dyson v. L. & N. W. Ry. Co.*, 7 Q. B. D. 32).

Proof of bona fides.

And it seems that in cases not strictly within the words of the section, but analogous to it, a penalty cannot be imposed irrespective of fraud. Thus, a penalty not exceeding 40s. imposed for travelling by a train of a superior class to that for which the ticket was issued, is bad (*Bentham v. Hoyle*, 3 Q. B. D. 289; 47 L. J. M. C. 51; *Dyson v. L. & N. W. Ry. Co.*, 7 Q. B. D. 32).

Offences not within the section.

A bye-law providing that any person travelling without a ticket shall pay the fare from the station whence the train started is, it seems, void upon two grounds. In the first place, because it imposes a penalty irrespective of fraud, and in the second place, because it is unreasonable, inasmuch as it imposes different penalties for the same offence (*Saunders v. S. E. Ry. Co.*, 5 Q. B. D. 456). Moreover, it would seem to be void under this section, because the penalty may exceed 40s. (see *L. & B. Ry. Co. v. Watson*, 3 C. P. D. 429). See 4 C. P. D. 118, where the judgment was affirmed on other grounds (see *Brown v. Gt. E. Ry. Co.*, 2 Q. B. D. 406; see, too, *Barry v. Midland Ry. Co.*, 1 R. 1 C. L. 130).

Payment of fare from station where train started.

It seems a bye-law which requires a person not only to show but to deliver up his ticket whenever required, for any purpose, is unreasonable (*Saunders v. S. E. Ry. Co.*, 5 Q. B. D. 456).

A bye-law imposing a penalty for not producing and delivering a ticket has been held to apply only to a person having and wilfully refusing to produce his ticket, and not to a person travelling without a ticket, but with no intent to defraud (*Dearden v. Townsend*, L. R. 1 Q. B. 10).

Production of ticket.

Such a bye-law would, however, apply to a season-ticket, though it has not to be delivered up (*Woodard v. Eastern Counties Ry. Co.*, 30 L. J. M. C. 196).

**8 Vict. c. 20,
s. 104.**

**Person with-
out ticket.**

**Penalty not
recoverable
under Sum-
mary Juris-
diction Act.**

**Detention of
offenders.**

**Power to
arrest.**

**Liability for
arresting
passenger.**

**Unnecessary
violence of
servant.**

**Mistake as to
offence.**

**Refusal to
deliver goods.**

**Presumption
of authority.**

**Arrest for
theft.**

A bye-law requiring a passenger to show his ticket when required does not justify the company in refusing to carry servants whose tickets have been taken by their master and kept in his possession (*Jennings v. Gt. N. Ry. Co.*, L. R. 1 Q. B. 7; 35 L. J. Q. B. 15).

Under a bye-law prohibiting a person from travelling without first paying his fare and obtaining a ticket, the company are justified in removing from the carriage a person without a ticket, though he offers to pay the fare (*McCarthy v. Dublin, Wicklow & Wexford Ry. Co.*, 1. R. 5 C. L. 244).

A person who has paid his fare for a certain distance with the intention of getting out at a station half way, to which a higher fare is charged, cannot be convicted for travelling without having previously paid his fare (*R. v. Frere*, 4 E. & B. 598).

A penalty under this section is not "a sum of money claimed to be due and recoverable on complaint to a court of summary jurisdiction" within the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 6, and is not subject to the procedure for recovery of civil debts prescribed by sect. 35 of the same Act (*R. v. Paget*, 8 Q. B. D. 151).

104. If any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

This section does not authorize the detention of a person, who has paid his own fare, for not paying for the carriage of chattels he takes with him (*Poulton v. L. & S. W. Ry. Co.*, L. R. 2 Q. B. 534. See *Chilton v. London & Croydon Ry. Co.*, 16 M. & W. 212; 16 L. J. Ex. 89, where a somewhat similar power of detention under a special Act was considered).

The section would seem to apply to offences under the Act only, and not to offences under the bye-laws. (See, too, section 154, *post*.)

Where the company have power to arrest an offender for an offence against their bye-laws, and they have upon the spot a person who can be presumed to be their agent for the purpose of exercising the power, the company are liable if the agent exercises the power either on erroneous belief as to the facts or in a manner which is unjustifiable (*Goff v. Gt. N. Ry. Co.*, 30 L. J. Q. B. 148; 3 E. & E. 672).

The presumption of authority to put in force bye-laws dealing with matters relating to the passenger traffic on the line would arise without further proof in the case of a stationmaster, inspector, or policeman employed by the company (*Goff v. Gt. N. Ry. Co.*, 30 L. J. Q. B. 148; 3 E. & E. 672; *Moore v. Metr. Ry. Co.*, L. R. 8 Q. B. 36. See *Kirkstall Brewery Co. v. Furness Ry. Co.*, L. R. 9 Q. B. 468; *Barnett v. S. London Tramways Co.*, 18 Q. B. D. 815).

In such cases the company are liable if the servant acts with unnecessary violence (*Eastern Counties Ry. Co. v. Broom*, 20 L. J. Ex. 196; 6 Ex. 314; *Seymour v. Greenwood*, 30 L. J. Ex. 328; 7 H. & N. 358; *Bayley v. Manchester, Sheffield & Lincolnshire Ry. Co.*, L. R. 8 C. P. 149).

So if the servant acts under the bye-laws in the belief that the offence has been committed upon which the power to act would arise, when it has not in fact been committed, the company are liable (*Goff v. Gt. N. Ry. Co.*, 30 L. J. Q. B. 148; 3 E. & E. 672; *Bayley v. Manchester, Sheffield & Lincolnshire Ry. Co.*, L. R. 8 C. P. 149).

Upon similar principles a refusal by the general superintendent to deliver up goods has been held to be sufficient evidence of a conversion by the company to maintain trover (*Giles v. Taff Vale Ry. Co.*, 2 E. & B. 822).

The presumption of authority would not, however, necessarily arise in the case of all servants employed by the company. If from the nature of the servant's employment he could not be presumed to have authority to exercise the powers of the company, the company would not be liable without evidence of his authority (see *Bank of New S. Wales v. Owston*, 4 App. C. 270).

With regard to cases of theft, a servant of the company suspecting a person of having stolen something left in his charge and of having it in his possession, will be presumed to be acting within his authority so as to make the company liable for wrongful acts done with a view to recover the stolen article (*Van den Eynde v. Ulster Ry. Co.*, 1. R. 4 C. L. 328).

But, except under the circumstances above mentioned, it cannot be presumed that a servant of the company has authority to arrest a person suspected for theft, unless there is something in the nature of his employment to justify the presumption. Thus, such a presumption might, perhaps, arise in the case of a policeman, or watchman, or superior officer; it does not arise in the case of a foreman, porter, or booking-clerk (*Edwards v. L. & N. W. Ry. Co.*, L. R. 5 C. P. 445; *Allen v. L. & S. W. Ry. Co.*, L. R. 6 Q. B. 65).

8 Vict. c. 20,
ss. 105, 106.

If upon the facts which the servant understands to have happened the company itself would have had no power to make an arrest, they will not be liable, in the absence of express authority to the servant (*Poultun v. L. & S. W. Ry. Co.*, L. R. 2 Q. B. 531).

Where company itself has no authority.

It has been held that an action for malicious prosecution may be maintained against a company (*Bank of New S. Wales v. Owen*, 4 App. C. 270; *Edwards v. Midl. Ry. Co.*, 6 Q. B. D. 287).

Malicious prosecution.

The point cannot, however, be said to be finally settled (see *Steven v. Midl. Ry. Co.*, 10 Ex. 352; *Kelly v. Midl. Gt. W. Ry. Co.*, 1 R. 7 C. L. 8; *Abrath v. N. E. Ry. Co.*, 11 App. C. 247).

In an action for malicious prosecution it lies upon the plaintiff to show a want of reasonable and probable cause, and malice (*Abrath v. N. E. Ry. Co.*, 11 App. C. 247).

(For an action for malicious libel against a company, see *Whitfield v. S. E. Ry. Co.*, E. B. & E. 115.)

Malicious libel.

The appearance of the company's solicitor to prosecute persons given into custody by a servant of the company, without evidence that he knew of the circumstances of the imprisonment, is not a ratification of the servant's act (*Eastern Counties Ry. Co. v. Broom*, 6 Ex. 314; 20 L. J. Ex. 196; *Walker v. S. E. Ry. Co.*, L. R. 5 C. P. 640).

Ratification of servant's acts.

Where a passenger was erroneously taken into custody, and left behind him in the carriage a pair of race-glasses, it was held that he could not recover from the company for the loss of them (*Glover v. L. & S. W. Ry. Co.*, L. R. 3 Q. B. 25).

105. No person shall be entitled to carry, or to require the company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence; and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Penalty for bringing dangerous goods on the railway.

[See the Explosives Act, 1875 (37 & 38 Vict. c. 17).]

Under a similar clause in a special Act it was held that a guilty knowledge is necessary before the offence contemplated by the section is committed (*Hearn v. Garton*, 28 L. J. M. C. 216).

Guilty knowledge.

This section does not affect the liability of companies to convey Her Majesty's troops, gunpowder, and other combustible matters at such prices and upon such conditions as may be from time to time contracted for between the Secretary of State for War and the companies under 7 & 8 Vict. c. 85, s. 12, but it does, it would seem, limit the powers of the Railway Commissioners under section 2 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), as to the facilities which they are empowered to compel the companies to afford for receiving, forwarding, and delivering traffic.

106. If any collector of tolls or other officer employed by the company be discharged or suspended from his office, or die, abscond, or absent himself, and if such collector or other officer, or the wife, widow, or any of the family or representatives of any such

Delivery of matters in possession or custody of toll collector at removal.

8 Vict. c. 20,
ss. 107, 108.

collector or other officer, refuse or neglect, after seven days' notice in writing for that purpose, to deliver up to the company, or to any person appointed by them for that purpose, any station, dwelling house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to any justice, it shall be lawful for such justice to order any constable, with proper assistance, to enter upon such station or other building, and to remove any person found therein, and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company, or any person appointed by them for that purpose.

Annual
account to be
made up, and
a copy trans-
mitted to the
clerk of the
peace, &c.

107. And be it enacted, that the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special Act for the year ending on the thirty-first day of December or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the directors, or some of them, and by the auditors, and shall, if required, transmit a copy of the said account, free of charge, to the overseers of the poor of the several parishes through which the railway shall pass, and also to the clerks of the peace of the counties through which the railway shall pass, on or before the thirty-first day of January then next; which last-mentioned account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: Provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such clerk of the peace or overseers of the poor, they shall forfeit for every such omission the sum of twenty pounds.

Bye-laws.

And with respect to the regulating of the use of the railway, be it enacted as follows:

108. It shall be lawful for the company, from time to time, subject to the provisions and restrictions in this and the special Act contained, to make regulations for the following purposes; (that is to say,)

Company to
regulate
the use of the
railway.

- For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled;
- For regulating the times of the arrival and departure of any such carriages;
- For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;
- For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages;
- For preventing the smoking of tobacco, and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company;

And, generally, for regulating the travelling upon, or using
and working of the railway ;

8 Vict. c. 20,
ss. 109, 110.

But no such regulation shall authorize the closing of the railway, or prevent the passage of engines or carriages on the railway, at reasonable times, except at any time when in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway or any part thereof.

Under this section the company can make bye-laws applicable to persons travelling in their own trains (*Dyson v. L. & N. W. Ry. Co.*, 7 Q. B. D. 32). See *Saunders v. S. E. Ry. Co.*, 5 Q. B. D. 456, and notes to sect. 103, *ante*. The bye-laws approved by the Board of Trade will be found in the Appendix.

109. For better enforcing the observance of all or any of such regulations it shall be lawful for the company, subject to the provisions of an Act passed in the fourth year of the reign of her present Majesty, intituled "An Act for Regulating Railways," to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act ; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company ; and any person offending against any such bye-law shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye-laws as a penalty for any such offence ; and if the infraction or non-observance of any such bye-law or other such regulation as aforesaid be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

Power to
make regula-
tions by bye-
laws.
3 & 4 Vict.
c. 97.

Bye-laws made under this section are documents of a public nature proveable by examined and certified copies (*Mottram v. Eastern Counties Ry. Co.*, 29 L. J. M. C. 57 ; 7 C. B. N. S. 58).

Bye-laws,
how proved.

Where a penalty of uncertain amount is imposed, there must be a demand and refusal to pay before the company can take proceedings to recover (*Brown v. Gt. E. Ry. Co.*, 2 Q. B. D. 406).

Penalty
should be
demanded.

The sum payable under a bye-law, providing that a person travelling without a ticket shall pay the fare from the station whence the train started, would seem to be a penalty or forfeiture within this section (*Brown v. Gt. E. Ry. Co.*, 2 Q. B. D. 406).

This section gives power to enforce bye-laws only by a penalty, recoverable before justices under section 145 and not as a debt by action (*London & Brighton Ry. Co. v. Watson*, 4 C. P. D. 118).

For the cases on bye-laws, see *Notes to sect. 103, ante*, and for bye-laws approved by the Board of Trade, see Appendix.

110. The substance of such last-mentioned bye-laws, when confirmed or allowed according to the provisions of any Act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company,

Publication of
such bye-laws.

**8 Vict. c. 20,
ss. 111—113.**

according to the nature or subject-matter of such bye-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed as often as the bye-laws thereon or any part thereof shall be obliterated or destroyed; and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

**Publication of
bye-laws.**

The publication is to be made according to the subject-matter of the bye-laws; a bye-law affecting a wharf must be published at a wharf, and a bye-law affecting a station at a station.

Proof that bye-laws were published at the stations, where a passenger got in and out, was held sufficient proof of publication, upon which to convict him of an offence (*Motteram v. Eastern Counties Ry. Co.*, 29 L. J. M. C. 57; 7 C. B. N. S. 58).

**Such bye-laws to be
binding on all
parties.**

111. Such bye-laws, when so confirmed, published, and affixed, shall be binding upon and be observed by all parties, and shall be sufficient to justify all persons acting under the same; and for proof of the publication of any such bye-laws it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye-laws, was affixed and continued in manner by this Act directed, and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be.

**Leaving of
railway.**

And with respect to leasing the railway, be it enacted as follows:

**Exercise of
power to lease
the railway.**

[See 8 & 9
Vict. c. 96.
As to working
agreements,
see Railways
Clauses Act,
1863 (26 & 27
Vict. c. 92),
ss. 22—29.]

112. Where the company shall be authorized by the special Act to lease the railway or any part thereof to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the railway, or the portion thereof comprised in such lease, in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and such other provisions, conditions, covenants, and agreements as are usually inserted in leases of a like nature.

**Powers vested
in the com-
pany may be
exercised by
the lessees.**

113. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of railway comprised therein, and during the continuance of any such lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the company, or the directors thereof, or their officers, agents, or servants, by virtue of this or the special Act, with regard to the possession, enjoyment, and management of the railway, or of the part thereof, comprised in such lease, and the tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special Act imposed on the company, and their directors, officers, and servants; and such lessee shall, with respect to the

railway comprised in such lease, be subject to all the obligations by this or the special Act imposed on the company. 8 Vict. c. 20,
s. 114.

An agreement by one company to take a lease of the line of another is, independently of statutory powers, void (*East Anglian Rys. Co. v. Eastern Counties Ry. Co.*, 11 C. B. 775; 21 L. J. C. P. 23). Lease of line.

And the same is the case with an agreement amounting to a delegation of the statutory powers of the company (*Beman v. Rufford*, 1 Sim. N. S. 550; *Gt. N. Ry. Co. v. Eastern Counties Ry. Co.*, 9 Hare, 306).

Where an Act authorizes a lease of the company's property to another company upon the certificate of the Board of Trade being obtained, no lease can be valid before the certificate has been obtained, and mere references in subsequent Acts of Parliament to an agreement for a lease which has been entered into, will not make the agreement valid (*Kent Coast Ry. Co. v. L. C. & D. Ry. Co.*, 3 Ch. 656).

Under an agreement by one company to work and maintain the line of another company the working company is entitled to exclusive possession (*Sevenoaks, Maidstone & Tunbridge Ry. Co. v. L. C. & D. Ry. Co.*, 11 Ch. D. 625; 27 W. R. 672). Agreement to work and maintain.

As to the effect of covenants in a lease by one company efficiently to work and repair the railway and works demised, see *West London Ry. Co. v. L. & N. W. Ry. Co.*, 22 L. J. C. P. 117; 11 C. B. 327; *East London Ry. Co. v. London & Brighton Ry. Co.*, 2 Nev. & M. 413.

A lease of a line of railway was held, under this section and the special Act, to entitle the company becoming the lessees, to the benefit of an agreement entered into by their lessors for the use of a part of a third company's line (*London & South Western Ry. Co. v. South Eastern Ry. Co.*, 8 Ex. 584).

A clause in a leasing Act that the "lessees shall provide and employ all such locomotive powers, engines, carriages, waggons, and other rolling stock, plant, stores, materials, and labour as shall be proper and sufficient for working and user of the demised undertaking, and the reception, accommodation, conveyance and delivery by the Wrexham Company of the traffic thereof, and the Buckley Company (the lessors) shall not be bound to provide any such thing," was held to make it obligatory on the Wrexham Company to find such waggons as should be proper and sufficient for the conveyance of traffic on the line (*Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co.*, 3 Nev. & Mac. 5, at p. 11; 3 Nev. & Mac. 162).

A lease provided that the lessors should execute all such additional works, if any, in and in connection with the demised railways, and for landowners and others, as might from time to time be required in pursuance of the Acts for the time being in force with respect to the management, working, user and maintenance of the railways and works thereof, and the traffic thereon; nevertheless, that the lessees should maintain and repair such works thus executed, and it was held that this provision extended to works necessary to afford facilities for traffic under the Railway and Canal Traffic Act, 1854, including therein works which it is incumbent on a railway company to provide if it would avoid contingencies for which it would incur a liability, such as new signals provided for putting the block system in operation (*London & South Western Ry. Co. v. Staines, Wokingham & Woking Ry. Co.*, 3 Nev. & Mac. 48).

As to the construction of a lease providing that the lessees should place to the account of the lessors a due mileage proportion of the gross receipts derived from through traffic see *Salisbury & Dorset Ry. Co. v. London & South Western Ry. Co.*, 3 Nev. & Mac. 314.

And with respect to the engines and carriages to be brought on the railway, be it enacted as follows: Carriages and engines.

114. Every locomotive steam engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke; and if any engine be not so constructed the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway. Engines to consume their smoke.
[Amended by
31 & 32 Vict.
c. 119, s. 9.]

Where an engine is properly constructed, but through the carelessness of the persons using it, the smoke is emitted and not consumed, there is no liability to the penalty imposed by this section. The liability only arises when the engine is so made as not to consume its smoke when used with proper care and under ordinary

8 Viet. c. 20, ss. 115, 116. circumstances (*Manchester, Sheffield & Lincolnshire Ry. Co. v. Wood*, 29 L. J. M. C. 29; 2 E. & E. 344).

Engines to be approved by the company, and certificate of approval given.

Unfit engines to be removed.

115. No locomotive or other engine, or other description of moving power, shall at any time be brought upon or used on the railway unless the same have first been approved of by the company; and within fourteen days after notice given to the company by any party desirous of bringing any such engine on the railway the company shall cause their engineer or other agent to examine such engine at any place within three miles distance from the railway to be appointed by the owner thereof, and to report thereon to the company; and within seven days after such report, if such engine be proper to be used on the railway, the company shall give a certificate to the party requiring the same of their approval of such engine; and if at any time the engineer or other agent of the company report that any engine used upon the railway is out of repair, or unfit to be used upon the railway, the company may require the same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company, and upon the engine being so repaired the company shall give a certificate to the party requiring the same of their approval of such engine; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof for the purpose of being used on the railway, such difference shall be settled by arbitration.

The company have a right to insist upon inspecting the engines of another company using the line under a traffic arrangement, though it may be inconvenient to the latter company, and there may in fact be no reason to suppose that improper engines are used (*Midl. Ry. Co. v. Ambergate, Nottingham & Boston and Eastern Junction Ry. Co.*, 10 H. 359).

Upon a reference of a difference between two railway companies as to the fitness of a locomotive of the one to run over the line of the other, the Railway Commissioners held that the locomotive objected to, a Fairlie engine from 60 to 70 tons in weight and 10 feet in extreme width, was, under the circumstances, not unfit to be used upon the line of the objecting company (*East & West Junction Ry. Co. v. Northampton & Banbury Junction Ry. Co.*, 2 Nev. & Mac. 293).

Penalty for using improper engines.

116. If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall in any of the cases aforesaid forfeit to the company a sum not exceeding twenty pounds; and in any such case it shall be lawful for the company to remove such engine from the railway.

This section does not deprive the company of the common law right of distress damage feasant, on an engine incumbering the railway if there be no certificate of approval (*Ambergate, Nottingham & Boston & Eastern Junction Ry. Co. v. Midl. Ry. Co.*, 2 E. & B. 793; 23 L. J. Q. B. 17).

117. No carriage shall pass along or be upon the railway (except in directly crossing the same, as herein or by the special Act authorized), unless such carriage be at all times, so long as it shall be used or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

8 Viet. c. 20,
ss. 117—123.

Carriages to be constructed according to company's regulations.

118. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

Regulations to apply also to company's carriages.

119. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway (except as aforesaid), the owner thereof, or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

Penalty for using improper carriages.

120. The respective owners of carriages using the railway shall cause to be entered with the secretary or other officer of the company appointed for that purpose the names and places of abode of the owners of such carriages respectively, and the numbers, weights, and gauges of their respective carriages; and such owners shall also, if so required by the company, cause the same particulars to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view; and every such owner shall, whenever required by the company, permit his carriage to be weighed, measured, or gauged at the expense of the company.

Owner's name, &c. to be registered, and exhibited on carriages.

121. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriage to be brought upon the railway, or to remove the same therefrom until such compliance.

On non-compliance carriage may be removed.

122. If the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part

Carriages improperly loaded, or suffered to obstruct the

8 Vict. c. 20,
ss. 123—126.

road, may be
unloaded or
removed.

thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner proper for preventing such collision or obstruction, and to detain such carriage or goods, or any part thereof, until the expenses occasioned by such unloading, removal, or detention be paid.

Company not
to be liable
for damage
by such un-
loading, &c.

123. The company shall not be liable for any damage or loss occasioned by any such unloading, removal, or detention as aforesaid, except for damage wilfully or negligently done to any carriage or goods so unloaded, removed, or detained; nor shall they be liable for the safe custody of any such carriage or goods so detained, unless the same be wrongfully detained by them, and then only for so long a time as the same shall have been so wrongfully detained.

Owners liable
for damage by
their servants.

124. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any trespass or damage done by their engines or carriages, or by any of the servants or persons employed by them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person; and every such servant or other person may lawfully be convicted of such trespass or damage before any two justices of the peace, either by the confession of the party offending, or upon the oath of some credible witness; and upon such conviction every such owner shall pay to the company, or to the person injured, as the case may be, the damage to be ascertained by such justices, so that the same do not exceed fifty pounds.

Owners may
recover from
servants.

125. It shall be lawful for any owner of an engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person by the same means as the company are enabled to recover the amount of such damage from the owner of any engine or carriage.

Arbitration.

Appointment
of arbitrators
when ques-
tions are to be
determined
by arbitra-
tion.

[See Compa-
nies Clauses
Act, 1845
(8 Vict. c. 16),
ss. 128—134;
Railway
Companies
Arbitration
Act, 1859
(22 & 23 Vict.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

126. When any dispute authorised or directed by this or the special Act, or any Act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the

part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

8 Vict. c. 20,
ss. 127—129.

c. 59); Board
of Trade
Arbitrations,
&c. Act, 1874
(37 & 38 Vict.
c. 40).]

Where two railway companies had agreed, that any differences as to a working agreement entered into between them should from time to time be referred to arbitration in the manner provided by the section corresponding to this section in the Scotch Act, the Railway Commissioners held that the agreement to refer to arbitration being contained in a working agreement made avowedly in pursuance of a special Act, and which but for the special Act could not have been made, it must be treated as "authorized under the special Act," and that, therefore, they had jurisdiction under section 8 of the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), to hear and determine the matter in dispute (*Port Patrick Ry. Co. v. Caledonian Ry. Co.*, 3 Nev. & Mac. 189).

127. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

Vacancy of
arbitrator
to be sup-
plied.

128. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment
of umpire.

129. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which

Board of
Trade em-
powered to
appoint an
umpire, on
neglect of the
arbitrators.

8 Vict. c. 20,
ss. 130—135.

the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of
death of
single arbi-
trator the
matter to
begin *de novo*.

130. If, where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

If either
arbitrator
refuse to act
the other to
proceed *ex
parte*.

131. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators
fail to make
their award
within
twenty-one
days the
matter to go
to the
umpire.

132. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

Power for
arbitrators
to call for
books, &c.

133. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator
and umpire
to make
declaration.

134. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration; that is to say,

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the Act [*naming the special Act*].

A. B.

“Made and subscribed in the presence of _____.”
And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Costs to be
in the discre-
tion of the
arbitrators.

135. Except where by this or the special Act, or any Act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators.

136. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

8 Vict. c. 20,
ss. 136—141.

Submission to arbitration may be made a rule of Court.

137. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

The award not to be set aside for matter of form.

138. And be it enacted, that any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Service of notices upon company.

139. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

Recovery of damages and penalties.

140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

Provision for damages not otherwise provided for.

141. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them,

Distress against the treasurer.

**8 Vict. c. 20,
ss. 142—145.**

on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all cost and expenses occasioned thereby, out of any money belonging to the company, coming into his custody or control, or he may sue the company for the same.

**Method of
proceeding
before justices
in questions
of damages,
&c.**

142. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

**Publication
of penalties.**

143. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application, shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

**Penalty for
defacing
boards used
for such pub-
lication.**

144. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

**Penalties to
be summarily
recovered**

145. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of

which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties can only be recovered in the manner pointed out by the Act and not by action in the County Court, or elsewhere (*London & Brighton Ry. Co. v. Watson*, 4 C. P. D. 118).

The penalty imposed need not, it seems, be a specific sum, if the mode in which the amount is to be ascertained is pointed out. But in such a case the company must demand the specific sum due before they can take proceedings (*Brown v. Gt. Eastern Ry. Co.*, 2 Q. B. D. 406; 41 L. J. M. C. 231).

A penalty imposed under sect. 103, *ante*, is not a sum of money claimed to be due and recoverable on complaint to a Court of Summary Jurisdiction within sect. 6 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and is not subject to the procedure for recovery of civil debts in a Court of Summary Jurisdiction under sect. 35 of the same Act. The justices ought, therefore, upon proof of the offence, to convict. Whether they are bound to issue a distress warrant forthwith under the next section is not clear (*R. v. Paget*, 8 Q. B. D. 151).

146. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices, or either of them, shall issue their or his warrant of distress accordingly.

147. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall by warrant cause such

8 Vict. c. 20,
ss. 146, 147.

before two
justices.
[Repealed as
regards
England from
"and on
complaint."
47 & 48 Vict.
c. 43.]

Penalties to
be levied by
distress.

[Repealed as
regards
England.
47 & 48 Vict.
c. 43.]

Imprisonment
in default of
distress.

[Repealed as
regards
England.
47 & 48 Vict.
c. 43.]

8 Vict. c. 20,
ss. 142—152.

offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and costs be sooner paid and satisfied.

Distress how
to be levied.

148. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not
unlawful for
want of form.

149. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application
of penalties.

150. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Penalties to
be sued for
within six
months.

[*Repealed as
regards
England.*
47 & 48 Vict.
c. 43.]

151. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognisable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Damage to
be made good
in addition to
penalty.

152. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted: and on non-payment of such damages, on demand, the

same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

8 Vict. c. 20,
ss. 153—157.

153. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on witnesses making default.

This section is repealed as regards England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), so far as relates to any matter to which the Summary Jurisdiction Acts apply.

154. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Transient offenders.

Power of arrest under this section is confined to offences under the Act or the special Act, and does not extend to offences against the bye-laws, whether such bye-laws are valid or not (*Barry v. Midland Ry. Co.*, 1. R. 1 C. L. 130).

155. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule to this Act annexed.

Form of conviction.

[Repealed as regards England.
47 & 48 Vict. c. 43.]

156. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the Superior Courts.

Proceedings not to be quashed for want of form, &c.

See the notes to section 145 of the Lands Clauses Act, 1845, *ante*.

157. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in

Parties allowed to appeal to quarter sessions on giving security.

[Repealed as regards England from

8 Vict. c. 20,
ss. 158—160.

“for the
county” to
end of section.
47 & 48 Vict.
c. 43.]

writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make
such order as
they think
reasonable.

158. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of
metropolitan
police district
to receive
penalties in-
curred within
his district.

159. Provided always, and be it enacted, that notwithstanding any thing herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present Majesty, intitled “An Act for regulating the Police Courts in the Metropolis;” and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict.
c. 71.

See *Receiver of Police v. Bell*, L. R. 7 Q. B. 433.

Person giving
false evidence
liable to

160. And be it enacted, that every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and cor-

ruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

8 Vict. c. 20,
ss. 161—165.

161. And be it declared and enacted, that all sums of money which have been or shall be paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery of Ireland, under the provisions of an Act passed in the second year of the reign of her present Majesty, intituled "An Act to provide for the custody of certain monies paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the Authority of Parliament," shall and may be paid out and applied under any order of the said Court of Chancery exempt from ushers' poundage.

penalties of
perjury.

Money paid
into the Bank
of Ireland to
be exempt
from ushers'
poundage.
1 & 2 Vict.
c. 117.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows :

*Access to
special Act.*

162. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them; shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act, so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Copies of
special Act to
be kept and
deposited, and
allowed to be
inspected.

7 Will. 4 &
1 Vict. c. 83.

163. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on
company
failing to
keep or de-
posit such
copies.

164. And be it enacted, that this Act shall not extend to Scotland.

Act not to
extend to
Scotland.

165. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of parliament.

Act may be
amended this
session.

SCHEDULE REFERRED TO BY THE FOREGOING ACT.

to wit.

BE it remembered, that on the day of in the year
of our Lord A. B. is convicted before us, C., D., two of her
Majesty's justices of the peace for the county of [here de-
scribe the offence generally, and the time and place when and
where committed], contrary to the [here name the special Act].
Given under our hands and seals the day and year first above
written.

C.
D.

Repealed as regards England, 47 & 48 Vict. c. 43.

CONSTABLES NEAR PUBLIC WORKS (IRELAND) ACT.

8 & 9 VICT. c. 46.

An Act for the Appointment of additional Constables for keeping the Peace near Public Works in Ireland. 8 & 9 Vict.
c. 46.

[21st July, 1845.]

WHEREAS it is expedient to provide for the appointment and payment of additional head and other constables for keeping the peace, and for the protection of the inhabitants and the security of property, in the neighbourhood of railway works and other public works in Ireland: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this Act, in any case in which the works of any railway, canal, or other public work of a similar nature shall be in progress of construction in Ireland, upon the application of the company or other parties carrying on any such public work, or upon the application of two or more justices of the peace of the county acting in the petty sessions of the district in or through which any such public work may be in the course of construction, to whom it shall be made appear, on the oath of two or more credible witnesses, that the appointment of additional constables for the keeping of the peace, and for the protection of the inhabitants, and the security of property, in the neighbourhood of such works, is necessary in consequence of the behaviour or reasonable apprehension of the behaviour of the persons employed in the said works, it shall be lawful for the lord lieutenant or other chief governor or governors of Ireland, if he or they shall so think fit, from time to time to order and direct that, in addition to the number of head and other constables whom the said lord lieutenant or other chief governor or governors of Ireland is or are authorized to appoint by virtue of an Act passed in the sixth year of the reign of his late Majesty, intituled "An Act to consolidate the Laws relating to the Constabulary Force in Ireland," and the other Acts amending the same, such number of head and other constables as he or they shall think fit, not exceeding in any case the number

Additional head and other constables may be appointed by the Lord Lieutenant to keep the peace near the works of railways, &c. in Ireland.

6 & 7 WILL. 4, c. 13.

8 & 9 Vict.
c. 46, ss. 2, 3.

specified in any such application as aforesaid, shall be appointed and employed during the construction of such public works, in aid of and in conjunction with the said constabulary force in such county, county of a city, county of a town, or place, near to the said public works so in progress of construction, as shall be mentioned in the said order, and shall remain there for such length of time, or remove to or remain at such other place or places near to such public works for such time or times, as shall be mentioned or directed by such order, or any other order or orders which may from time to time be made by such lord lieutenant or other chief governor or governors or by the inspector general of the said constabulary force, under the control and directions of the said lord lieutenant or other chief governor or governors; and such constables may in like manner, by any such order, be reduced in number, or wholly removed from the neighbourhood of such works; and the head and other constables so appointed shall, during the period of such employment, have the same amount of pay and allowances, and the same rights, powers and authorities, privileges and advantages, and be subject to the same provisions and enactments, rules, regulations, and orders, and be in all respects in the same situation in the county, county of a city, or county of a town in which they shall be stationed, as far as the circumstances of the case will admit, as if they had been appointed to and formed part of the constabulary force established in and for such county, county of a city, or county of a town.

Expence of additional head and other constables to be paid by the company or parties carrying on such works.

2. And be it enacted, that the inspector general of the said constabulary force, with the assistance of the receiver of the said force, shall from time to time, or as often as he shall think convenient, prepare and certify under his hand a detailed account of the expence incurred for the pay, salary, clothing and equipment, lodging, and other allowances of such men so appointed and employed as aforesaid, which expence, when approved and certified by the chief or under secretary of such lord lieutenant or other chief governor or governors, the said company or parties, or their agent, shall, upon demand, pay to the said receiver, to be placed to the credit of the county, county of a city, or county of a town in which such constables as aforesaid shall have been so employed.

If the company or parties neglect to pay the expence, it may be recovered at the suit of her Majesty's Attorney-General for Ireland, or by distress and sale of the goods of the company.

3. And be it enacted, that in all cases where the company or other parties carrying on such public work shall refuse or neglect, during fourteen days next after demand thereof, to pay any such expence, or any part thereof, as shall have been so certified and approved as aforesaid, the same shall and may be sued for in any of the superior courts, at the suit of her Majesty's Attorney-General for Ireland, as a debt due to her Majesty, or, upon production of such account, so certified and approved, before any two justices of the county, county of a city, or county of a town in which such constables shall have been so employed as aforesaid; and upon proof on oath of such demand made as aforesaid of such company or parties, or any officer superintending such public

works, and upon the application of the said receiver of the constabulary force, or any person by him authorized in writing, it shall be lawful for such justices, by their warrant under their hands and seals (which they are hereby authorized and required to grant), to cause the amount of such account to be levied, together with the expenses of levying the same, by distress and sale of the goods and chattels of the company or other parties carrying on such public works as aforesaid; and the surplus, if any, arising from such distress and sale, after deducting the amount of such account, together with the reasonable expences attendant on such distress and sale, shall be rendered to the said company or parties.

8 & 9 Vict.
c. 48, s. 3.

RAILWAY LEASING ACT.

8 & 9 VICT. c. 96.

8 & 9 Vict.
c. 96.

An Act to restrict the Powers of selling or leasing Railways contained in certain Acts of Parliament relating to such Railways.
[4th August, 1845.]

No railway company to grant or accept a lease or transfer of any railway unless under a distinct provision of an Act specifying the parties.

WHEREAS provisions have been introduced in various Acts of parliament, during the present session of parliament, relating to railways, giving to railway companies general powers of granting or accepting a lease, sale, or transfer of their own or other lines of railway; and it is expedient that such powers should be restrained: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall not be lawful for the company of proprietors of any railway, by virtue of any powers contained in any Act passed in the present session, to make or grant, or for any other railway company or party, by virtue of any such powers, to accept, a sale, lease, or other transfer of any railway, unless under the authority of a distinct provision in some Act of parliament to that effect specifying by name the railway to be so leased, sold, or transferred, and the company or party by whom such lease, sale, or transfer may be respectively made, granted, or accepted.

See the Railways Clauses Act, 1845, sects. 87, 92 and 93, and the Railways Clauses Act, 1863, 26 & 27 Vict. c. 92, sects. 22—29.

PARLIAMENTARY DEPOSITS ACT.

9 VICT. c. 20.

An Act to amend an Act of the second year of her present Majesty, for providing for the custody of certain monies paid, in pursuance of the standing orders of either house of Parliament, by subscribers to works or undertakings to be effected under the authority of Parliament.

9 Vict. c. 20,
ss. 1, 2.

[18th June, 1846.]

WHEREAS an Act was passed in the second year of the reign of her present majesty Queen Victoria, intituled "An Act to provide for the custody of certain monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament": And whereas it is expedient that the said Act should be repealed, and should be re-enacted, with such modifications, extensions, and alterations as after mentioned.

1 & 2 Vict.
c. 117.

Section 1 is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

2. And be it enacted, that in all cases in which any sum of money is required by any standing order of either House of Parliament, either now in force or hereafter to be in force, to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an Act of Parliament, if the director or person, or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the parliaments with respect to any such money required by any standing order of the lords spiritual and temporal in parliament assembled, or to one of the clerks of the private bill office of the House of Commons with respect to any such money required by any standing order of the Commons in Parliament assembled, to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand, to direct that such sum of money shall be paid in manner hereinafter mentioned; (that is to say,) into the Bank of England, in the name and with the privity of the Accountant-General* of the Court of Chancery in England, if the work or undertaking in respect of which the sum of money

Authority to
deposit.

* [Now the
Paymaster-
General.]

9 Vict. c. 20,
s. 3.

† See *supra*.

is required to be deposited is intended to be executed in that part of the United Kingdom called England, or into any of the banks in Scotland established by Act of Parliament or royal charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland, or into the Bank of Ireland, in the name and with the privity of the † Accountant-General of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and such warrant or order shall be a sufficient authority for the Accountant-General of the Court of Chancery in England, the Queen's Remembrancer of the Court of Exchequer in Scotland, and the Accountant-General of the Court of Chancery in Ireland, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

The deposit may be made with borrowed funds (*Scott v. Oakeley*, 33 L. J. Ch. 612; 33 Beav. 601).

Payment of
deposit.

3. And be it enacted, that it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to pay the sum mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order, pursuant to the method prescribed by any Act or Acts for the time being in force for regulating monies paid into the said courts, and pursuant to the general orders of the said courts respectively, and without fee or reward; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, or the stocks, funds, or securities authorized to be transferred or deposited in lieu thereof as hereinafter mentioned, shall there remain until the same, with all interest and dividends, if any, accrued thereon, shall be paid out of such bank, in pursuance of the provisions of this Act: Provided always, that in case any such director or person, directors or persons, having the management of any such proposed work or undertaking as aforesaid, shall have previously invested in the three per centum consolidated or the three per centum reduced bank annuities, exchequer bills, or other government securities, the sum or sums of money required by any such standing order of either House of Parliament as aforesaid, to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an Act of Parliament, it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to deposit such exchequer bills or other government securities in the bank mentioned

in such warrant or order, in the name and with the privity of the officer or person in whose name such sum shall by such warrant or order be directed to be paid, or to transfer such government stocks or funds into the name of the officer or person; and such transfer or deposit shall be directed by such clerk of the office of the Clerk of the Parliaments, or such clerk of the private bill office of the House of Commons, as the case may be, in lieu of payment of so much of the sum of money required to be deposited as aforesaid as the same exchequer bills or other the government stocks or funds will extend to satisfy at the price at which the same were originally purchased by the said person or persons, director or directors as aforesaid, such price to be proved by production of the broker's certificate of such original purchase.

9 Vict. c. 20,
ss. 4, 5.

4. And be it enacted, that if the person or persons named in such warrant or order, or the survivors or survivor of them, desire to have invested any sum so paid into the Bank of England or the Bank of Ireland, or any interest or dividend which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the Court in the name of whose Accountant-General the same may have been paid may, on a petition presented to such Court in a summary way by him or them, order that such sum or such interest or dividends shall, until the same be paid out to the parties entitled to the same in pursuance of this Act, be laid out in the three per centum consolidated or three per centum reduced bank annuities, or any government security or securities, at the option of the aforesaid person or persons, or the survivor or survivors of them.

Investment of
deposit.

By Order LV. r. 2 (6), applications under this and any other Act relating to parliamentary deposit for investment, payment of dividends, and payment out of Court are to be made by summons.

The investment must be named in the application, and the Court will not allow the company a discretion to invest at separate times or in different securities (*Ex parte Newport, Abergavenny & Hereford Ry. Co.*, 11 Jur. 160).

For the securities in which the deposit may be invested, see the notes to sect. 70 of the Lands Clauses Act, 1845, *ante*.

5. And be it enacted, that on the termination of the session of parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into parliament, or if such petition or bill shall be rejected* or finally withdrawn by some proceeding in either house of parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an Act be passed authorizing the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition to the Court in the name of whose Accountant-General the sum of money mentioned in such warrant or order shall have been paid, or such exchequer bills, stocks, or funds shall have been deposited or transferred as

Repayment of
deposit.

* See 28 & 29
Vict. c. 27,
s. 8.

9 Vict. c. 20,
s. 5.

aforesaid, or to the Court of Exchequer in Scotland in case such sum of money shall have been paid in the name of the said Queen's Remembrancer, the Court in the name of whose Accountant-General or Queen's Remembrancer such sum of money shall have been paid, or such exchequer bills, stocks, or funds shall have been deposited or transferred, shall by order direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same may have been invested, and the interest or dividends thereof, or the exchequer bills, stocks, or funds so deposited or transferred as aforesaid, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn or not being presented, or of an Act being passed authorising the making of such work or undertaking, unless upon the production of the certificate of the chairman of committees of the House of Lords with reference to any proceeding in the House of Lords, or of the speaker of the House of Commons with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the Houses of Parliament, or was not presented, or that such Act was passed, which certificate the said chairman or speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them: Provided always, that the granting of any such certificate, or any mistake or error therein or in relation thereto, shall not make the chairman or speaker signing the same liable in respect of any monies, stocks, funds, and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this Act, or the interest or dividends thereof.

Granting
certificate, &c.
not to make
the chairman
or speaker
signing the
same liable.

Where a bill is introduced for the construction of several railways, some of which are abandoned, the Court will not order a proportional part of the deposit to be paid out (*In re Aberystwith Ry. Co.*, 30 L. J. Ch. 674: 3 D. F. & J. 201).

An order for payment will be made upon a certificate signed by the deputy-speaker in the speaker's absence (*Ex parte Stockbridge Ry. Bill*, 2 Eq. 364).

It is stated in Seton, 4th ed., p. 1457, to be the practice to order payment on the petition of the majority of the depositors, the decisions in *Re Staines & Richmond Ry. Co.*, 9 Jur. 479; *Re Surrey, &c. Ry. Co.*, V.-C. K. B., May 6, 1846, not having been followed.

The deposit may be paid to the petitioners or their nominees (*Re Warwick & Leamington Ry. Co.*, 13 Sim. 31; *In re Dartmouth & Torbay Ry. Co.*, 9 W. R. 609).

The signatures to the petition should be either attested by a solicitor or verified by affidavit (*Ex parte Brompton Waterworks*, 8 W. R. 636, n.; *Re Warwick & Leamington Ry. Co.*, 13 Sim. 31).

Payment out of the deposit has been held to be vacation business (*In re Wigan Junction Rys. Act*, 1875, 10 Ch. 541).

Application of
deposit after
abandonment.

Acts authorizing public undertakings usually provide that, if the undertaking is abandoned, the parliamentary deposit shall be applied in compensating landowners, or if no compensation is payable, that it shall be forfeited to the Crown, or in the discretion of the Court applied for the benefit of creditors.

Inquiries as
to land-
owners.

Where an application is made to deal with the deposit after abandonment of the undertaking, the Court directs inquiries to ascertain whether any persons have claims upon the fund (see in Seton, p. 1456).

The inquiry as to landowners will not be dispensed with though the application

is supported by an affidavit that the company has not issued any notices to treat or put in force any of its powers (*In re Brewood, &c. Ry. Co.*, W. N. (1879), 109. 9 Vict. c. 20, s. 5.

Under the usual provision compensating landowners whose property has been interfered with or rendered less valuable by the commencement, construction, or abandonment of the railway, a landowner can, as a rule, only claim compensation for acts done or omitted by the company under their statutory powers, and not on account of a collateral obligation. What compensation can be claimed.

But if the collateral obligation is of such a nature (as, for instance, a covenant to build a station) as that the abandonment necessarily involves a breach of it, the breach may be taken into account in assessing the value of the land (*In re Ruthin and Cerrig-y-Druidion Ry. Act*, 32 Ch. D. 438).

A covenant to put up fences on the land taken is not an obligation which could form the subject of a claim for compensation (*ib.*).

A landowner who has himself constructed on his land works for the line before it has been authorized, may claim compensation for damage from its abandonment (*In re Potteries, Shrewsbury, &c. Ry. Co.*, 25 Ch. D. 251).

Mortgagees may be entitled to claim compensation for the abandonment of the line (*ib.*). Works for line constructed by landowner.

The measure of injury must be determined by comparing the value of the estate immediately before and after the abandonment (*ib.*). Measure of damage.

The parliamentary deposit will be applied only in payment of creditors who cannot get payment otherwise. Calls payable by shareholders must first be got in and applied in payment of debts (*In re Bradford Tramways Co.*, 4 Ch. D. 18). Assets must be exhausted.

Creditors claiming the benefit of the parliamentary deposit must be meritorious creditors. The claims of the promoters and parliamentary agents of the company for costs incurred in obtaining the Act or in relation to the promotion of the company will not be allowed (*In re Lowestoft, Yarmouth, and Southwold Tramways Co.*, 6 Ch. D. 484; *In re Birmingham and Lichfield Junction Ry. Co.*, 28 Ch. D. 652; *Re Manchester and Milford Ry. Co.*, 45 L. T. 129. See *In re Brompton and Longtown Ry. Co.*, 10 Eq. 613; and *In re Kensington Station Act*, 20 Eq. 197, which latter case appears to be overruled. See also the Abandonment of Railways Acts, 1850 and 1869, *post*. Meritorious creditors.

Where the company obtained an Act authorizing a petition for winding up the company, and the sale of its undertaking and a winding-up order was made, the undertaking was held to have been abandoned (*In re Potteries, Shrewsbury, &c. Ry. Co.*, 25 Ch. D. 251). What is abandonment.

GAUGE OF RAILWAYS.

9 & 10 VICT. c. 57.

9 & 10 Vict.
c. 57, ss. 1, 2.

An Act for regulating the Gauge of Railways.

[18th August, 1846.]

On what
gauge rail-
ways shall be
made.

WHEREAS it is expedient to define the gauge on which railways shall be constructed: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the passing of this Act it shall not be lawful (except as hereinafter excepted) to construct any railway for the conveyance of passengers on any gauge other than four feet eight inches and half an inch in Great Britain, and five feet three inches in Ireland: Provided always, that nothing hereinbefore contained shall be deemed to forbid the maintenance and repair of any railway constructed before the passing of this Act on any gauge other than those hereinbefore specified, or to forbid the laying of new rails on the same gauge on which such railway is constructed within the limits of deviation authorized by the several Acts under the authority of which such railways are severally constructed.

Exception of
certain rail-
ways.

2. And be it enacted, that nothing hereinbefore contained shall apply to any railway constructed or to be constructed under the provisions of any present or future Act containing any special enactment defining the gauge or gauges of such railway, or any part thereof, or to any railway which is in its whole length southward of the Great Western Railway, or to any railway in any of the counties of Cornwall, Devon, Dorset, or Somerset, for which any Act has been or shall be passed in this session of parliament, or to any railway in any of the last-mentioned counties now in course of construction, or to the two railways severally to be constructed under the authority of two Acts passed in this session of parliament, severally intituled, "An Act for making a railway from the Great Western Railway at West Drayton to Uxbridge in Middlesex," and "An Act for making a railway from the Great Western Railway at Maidenhead in Berkshire to the town of High Wycombe in the county of Buckingham;" or to so much of an Act passed in this session, intituled "An Act to authorize certain extensions of the line of the Oxford, Worcester, and Wolverhampton

9 & 10 Vict.
c. clxvi.

9 & 10 Vict.
c. cccxxvi.

9 & 10 Vict.
c. cclxxviii.

ton Railway, and to amend the Act relating thereto," as authorizes the construction of a branch railway from the Oxford, Worcester, and Wolverhampton Railway to the town of Witney in the county of Oxford; or to an Act passed or which may be passed in this session of parliament, "to authorize the construction of a railway from Melin-y-Manach to Rhydydefydd in the county of Glamorgan."

9 & 10 Vict.
c. 57, ss. 3-6.

3. And be it enacted, that the several railways authorized to be constructed by an Act passed in the last session of parliament, intituled "An Act for making a railway, to be called 'The South Wales Railway,'" and by an Act also passed in the last session of parliament, intituled "An Act for making a railway from Monmouth to Hereford, with branches therefrom to Westbury and to join the Forest of Dean Railway," and by two Acts passed in this session of parliament, severally intituled "An Act for completing the line of the South Wales Railway, and to authorize the construction of an extension and certain alterations of the said railway, and certain branch railways in connection therewith," and "An Act for making a railway communication between the city of Bristol and the proposed South Wales Railway in the county of Monmouth, with a branch railway therefrom," shall be constructed on the gauge of seven feet.

Certain railways to be on the broad gauge.
8 & 9 Vict.
c. cxc.
8 & 9 Vict.
c. xcvi.
9 & 10 Vict.
9 & 10 Vict.

4. And be it enacted, that it shall not be lawful after the passing of this Act to alter the gauge of any railway used for the conveyance of passengers.

Gauge not to be altered.

5. And be it enacted, that nothing hereinbefore contained shall be deemed to affect the provisions of two Acts passed in the last session of parliament, respectively intituled "An Act for making a railway from the city of Oxford to the town of Rugby," and "An Act for making a railway from Oxford to Worcester and Wolverhampton," with respect to the gauge on which they are to be formed, or the additional rails which according to the several provisions of the last two recited Acts are to be or may be laid down and maintained on the railways thereby authorized, or with respect to the powers thereby conferred on the Commissioners of her Majesty's Privy Council for Trade and Foreign Plantations concerning the construction and use of the railways thereby authorized.

Provision as to the Oxford and Rugby, and Oxford, Worcester, and Wolverhampton railways.
8 & 9 Vict.
c. clxxxviii.
8 & 9 Vict.
c. clxxxiv.

6. And be it enacted, that if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this Act, the company authorized to construct the railway, or, in the case of any demise or lease of such railway, the company for the time being having the control of the works of such railway, shall forfeit ten pounds for every mile of such railway which shall be so unlawfully constructed or altered, during every day that the same shall continue so unlawfully constructed or altered; and in estimating the amount of any such penalty any distance less than one mile shall be estimated as a mile.

Penalty on company for constructing railways contrary to this Act.

9 & 10 Vict.
c. 57, ss. 7, 8.

Railways
constructed
contrary to
this Act may
be abated.

7. And be it enacted, that, over and above the penalty hereinbefore provided, if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this Act, it shall be lawful for the Commissioners of her Majesty's Woods, Forests, Land Revenues, Works and Buildings, or for the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations, to abate and remove the same or any part thereof so constructed or altered contrary to the provisions of this Act, and to restore the site thereof to its former condition.

Recovery of
penalties.

8 & 9 Vict.
c. 20.

8. And be it enacted, that all penalties under this Act may be recovered from the company liable to pay and make good the same, as, under the provisions of an Act passed in the last session of parliament, intituled "An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of railways," a penalty for any infringement of the last-recited Act is recoverable against a company authorised to construct a railway.

LORD CAMPBELL'S ACT.

9 & 10 VICT. c. 93.

An Act for Compensating the Families of Persons Killed by Accidents. [26th August, 1846.] 9 & 10 Vict.
c. 93, ss. 1, 2.

WHEREAS no action at law is now maintainable against a person who by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that whensoever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

[Amended by 27 & 28 Vict. c. 95, and see 31 & 32 Vict. c. 119, ss. 25, 26.]

An action to be maintainable against any person causing death through neglect, &c. notwithstanding the death of the person injured.

The statute does not create a new cause of action; if, therefore, the deceased has done anything which would have prevented him from bringing an action in his lifetime, no action can be brought after his death.

Thus, contributory negligence on the part of the deceased is an answer to an action by his representatives under the statute (*Senior v. Ward*, 28 L. J. Q. B. 139; 1 E. & E. 385; *Pym v. Gt. N. Ry. Co.*, 31 L. J. Q. B. 249; 32 L. J. Q. B. 378; 2 B. & S. 759; 4 B. & S. 396; *Manby v. St. Helen's Canal & Ry. Co.*, 27 L. J. Ex. 164; *Tucker v. Chaplin*, 2 C. & R. 730).

So, if a person injured accepts a sum of money in full satisfaction of all claims and causes of action against the company, his right of action is gone, and his death does not create a fresh cause of action (*Read v. Gt. E. Ry. Co.*, L. R. 3 Q. B. 555; 37 L. J. Q. B. 278; 9 B. & S. 714).

And the representative of a workman, who has contracted not to claim compensation for injuries under the Employers' Liability Act, cannot maintain an action under this Act. (*Griffiths v. Earl of Dudley*, 9 Q. B. D. 357).

And where a passenger's ticket stipulated that the company were not to be responsible for "loss or damage arising from perils of the sea," and the passenger was drowned, it was held that his representative could not maintain an action. (*Haigh v. Royal Mail Steam Packet Co.*, W. N. (1883), 151).

Statute gives no fresh cause of action.

Contributory negligence.

Satisfaction.

2. And be it enacted, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose

Action to be for the benefit of certain re-

9 & 10 Vict.
c. 93, s. 3.

lations and shall be brought by and in the name of executor or administrator of the deceased.

death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

Illegitimate child.

An action cannot be brought for the benefit of an illegitimate child (*Dickinson v. N. E. Ry. Co.*, 33 L. J. Ex. 91; 2 H. & C. 735; *Re Wilson*, 35 L. J. Ch. 243).

But it may be on behalf of a child *en ventre* at the time of the death and subsequently born (*The George & Richard*, 3 A. & E. 466).

Pecuniary advantage.

In order to maintain an action under this Act, the persons on whose behalf the action is brought must prove that during the lifetime of the deceased a pecuniary advantage accrued to them owing to their relationship with him (*Sykes v. N. E. Ry. Co.*, 44 L. J. C. P. 191).

The action may be maintained though there may be no loss of property, if the effect of the death is to bring about a different distribution of the property among the family of the deceased. As, for instance, where a settled estate descends upon the death of the deceased (*Pym v. Gt. N. Ry. Co.*, 32 L. J. Q. B. 377; 4 B. & S. 396).

Measure of damages.

The legal liability of the person killed to the persons on whose behalf the action is brought is not the measure of damages. The reasonable expectation of pecuniary advantage from the relative if he had remained alive may be taken into account (*Dalton v. S. E. Ry. Co.*, 27 L. J. C. P. 227; 4 C. B. N. S. 296; *Franklin v. S. E. Ry. Co.*, 3 H. & N. 211; *Hetherington v. N. E. Ry. Co.*, 9 Q. B. D. 160).

There must be actual pecuniary loss to the persons on whose behalf the action is brought.

Child's earnings.

But the loss of the small weekly earnings of a child living with its parents is sufficient, if it is not shown that the cost of maintenance is larger than the earnings (*Duckworth v. Johnson*, 29 L. J. Ex. 25; 4 H. & N. 653; *Condon v. Gt. S. & W. Ry. Co.*, 16 Ir. C. L. 415).

Loss of son's services.

Where a son works for his father, receiving the full wages of a workman, the loss of the son's services is not such damage as will entitle the father to maintain an action (*Sykes v. N. E. Ry. Co.*, 44 L. J. C. P. 191; *Hetherington v. N. E. Ry. Co.*, 9 Q. B. D. 160).

But the case is different if the son works for the father for nothing (*Franklin v. S. E. Ry. Co.*, 4 C. B. N. S. 296; 27 L. J. C. P. 227).

Future advantage.

Where the son is being brought up with a view to follow his father's business, but has not as yet been of any service to him, no damages can be given in respect of the probability that the father would, if the son had lived, have derived advantage from him (*Bourke v. Cork & Macroom Ry. Co.*, 4 L. R. Ir. 682).

How damages assessed.

The jury should not, it seems, be directed to give damages to the full amount of a perfect compensation for the pecuniary injury, but they should take a reasonable view of the case and give what they consider, under all the circumstances, a fair compensation (*Rowley v. L. & N. W. Ry. Co.*, 42 L. J. Ex. 153; L. R. 8 Ex. 221).

Consolation.

Damages can only be given for actual pecuniary injury, and not by way of consolation (*Blake v. Midland Ry. Co.*, 18 Q. B. 93; 21 L. J. Q. B. 233).

Funeral expenses.

Nor can damages be given for funeral expenses or mourning (*Dalton v. S. E. Ry. Co.*, 27 L. J. C. P. 227; 4 C. B. N. S. 296).

Policy monies deducted.

A sum receivable by the persons on whose behalf the action is brought by reason of the death must be deducted in estimating the damages (*Hicks v. Newport, &c. Ry. Co.*, 4 B. & S. 403).

Only one action shall lie, and to be commenced within twelve months.

3. Provided always, and be it enacted, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

An action under this Act in which the executor has recovered damages, is not a bar to an action by the executor for damage done to the estate of the deceased during his lifetime by the same accident (*Leggott v. Gt. N. Ry. Co.*, 1 Q. B. D. 599).

4. And be it enacted, that in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

9 & 10 Vict.
c. 93, ss. 4—6.

Plaintiff to
deliver a full
particular of
the person for
whom such
damages shall
be claimed.

Construction
of Act.

5. And be it enacted, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. And be it enacted, that this Act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

Act to take
effect after
passing, and
not to apply
to Scotland.

The words to "and that" in this section and the whole of section 7 are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

DUTIES ON RAILWAY PASSENGERS.

10 & 11 VICT. c. 42.

10 & 11 Vict.
c. 42, ss. 1, 2.

An Act to transfer the Collection and Management of the Duties in respect of Stage Carriages, Hackney Carriages, and Railway Passengers from the Commissioners of Stamps and Taxes to the Commissioners of Excise.

[25th June, 1847.]

Duties in respect of railway passengers, transferred to the commissioners of excise [now Commissioners of Inland Revenue. 12 & 13 Vict. c. 1.]

WHEREAS the collection and management of the several and respective duties hereinafter specified and described are now by law vested in the Commissioners of Stamps and Taxes, and it is expedient to transfer the same to the Commissioners of Excise; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, the several and respective duties hereinafter specified and described; (that is to say,) the duties granted and now payable in Great Britain by and under an Act passed in the fifth and sixth years of the reign of her present Majesty, for and in respect of passengers conveyed upon railways, shall be and the same are hereby transferred to and placed under the care and management of the Commissioners of Excise for the time being; and the said several and respective duties shall thenceforth be denominated and deemed to be duties of excise, and shall be raised, levied, collected, and accounted for by and under the authority of the Commissioners of Excise and their officers, anything in any former Act or Acts contained to the contrary notwithstanding.

Powers and provisions of the said Acts to be executed by commissioners and officers of excise.

2., all the powers, provisions, regulations, and directions, now in force contained in the said several Acts hereinbefore mentioned or referred to, or in any other Act or Acts, and which at the time of the passing of this Act may lawfully be executed and enforced by the Commissioners of Stamps and Taxes, or their officers, in relation to the said respective duties hereby transferred as aforesaid, shall be executed and enforced by the Commissioners of Excise and their officers respectively, as fully and effectually to all intents and purposes as if such powers, provisions, regulations, and directions had been repeated and re-enacted in this Act, and expressly given to the said Commissioners of Excise

and their officers respectively; and that all the powers, provisions, regulations, and directions, forfeitures, pains, and penalties contained in or imposed by any Act or Acts now in force relating to the said respective duties hereby transferred as aforesaid, as well as the powers, provisions, regulations, and directions, forfeitures, pains, and penalties contained in or imposed by any Act or Acts in force in relation to any of the duties of excise, so far as such last-mentioned powers, provisions, regulations, and directions, forfeitures, pains, and penalties shall be applicable to the said respective duties hereby transferred as aforesaid, and so far as the same shall not be inconsistent with the special powers, provisions, regulations, and directions, forfeitures, pains, and penalties now in force in relation to the said respective duties hereby transferred as aforesaid, shall be of full force and effect, and shall be applied, enforced, and put in execution for raising, collecting, levying, recovering, and securing the said last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such powers, provisions, regulations and directions, forfeitures, pains and penalties were repeated and specially enacted in this Act with reference to the said respective duties hereby transferred as aforesaid; and wherever in any Act or Acts now in force in relation to the said last-mentioned respective duties, the head office for stamps or for stamps and taxes, or the solicitor of stamps, or for stamps and taxes, or any officer of stamp duties, or for stamps and taxes, is mentioned or designated, the same shall in relation to the said respective duties hereby transferred as aforesaid, be deemed and taken to mean the chief office of excise in London, the solicitor of excise, and any officer of excise respectively.

10 & 11 Vict.
c. 42, s. 2.

Sections 3—6 are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

PRIVATE BILLS COSTS (COMMONS).

10 & 11 VICT. c. 69.

10 & 11 Vict. *An Act for the more effectual Taxation of Costs on Private*
 c. 69, ss. 1, 2. *Bills in the House of Commons.* [22nd July, 1847.]

[See 28 & 29
 Vict. c. 27.] WHEREAS an Act was passed in the sixth year of the reign of
 6 G. 4, c. 123. his late Majesty King George the Fourth, intituled "An Act to
 establish a Taxation of Costs on private bills in the House of
 Commons, and to prohibit the sale of certain offices under the
 Serjeant at Arms attending the House of Commons:" And whereas
 it is expedient to repeal the same, and to make more effectual
 provision for taxing the costs and expenses to be charged by par-
 liamentary agents, attornies, solicitors, and others in future sessions
 of parliament in respect of bills subject to the payment of fees in
 parliament, commonly called private bills, and to be incurred in
 complying with the standing orders of the House of Commons
 relative to such bills, and in preparing, bringing in, and carrying
 the same through, or in opposing the same in, the House of Com-
 mons: Be it enacted by the Queen's most excellent Majesty, by
 and with the advice and consent of the lords spiritual and tem-
 poral, and commons, in this present parliament assembled, and by
 the authority of the same.

Section 1 is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Parliament-
 ary agent,
 attorney, or
 solicitor not
 to sue for
 costs until
 one month
 after delivery
 of his bill.

2. And be it enacted, that no parliamentary agent, attorney, or
 solicitor, nor any executor, administrator, or assignee of any par-
 liamentary agent, attorney, or solicitor, shall commence or main-
 tain any action or suit for the recovery of any costs, charges, or
 expenses in respect of any proceedings in the House of Commons
 in any future session of parliament relating to any petition for a
 private bill, or private bill, or in respect of complying with the
 standing orders of the said house relative thereto, or in preparing,
 bringing in, and carrying the same through, or opposing the same
 in, the House of Commons, until the expiration of one month
 after such parliamentary agent, attorney, or solicitor, or executor,
 administrator or assignee of such parliamentary agent, attorney,
 or solicitor, has delivered unto the party to be charged therewith,
 or sent by post to or left for him at his counting-house, office of

business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, or in the case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator or assignee of such parliamentary agent, attorney, or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor in proving a compliance with this Act to prove the contents of the bill delivered, sent, or left by him, but it shall be sufficient to prove that a bill of costs, charges, and expenses subscribed in manner aforesaid, or inclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a *bonâ fide* compliance with this Act: Provided also, that it shall be lawful for any judge of the superior courts of law or equity in England or Ireland, or of the court of session in Scotland, to authorise a parliamentary agent, attorney, or solicitor to commence an action or suit for the recovery of his costs, charges, and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

10 & 11 Vict.
c. 69, ss. 3—5.

Evidence of
delivery of
bill.

Power to
judge to
authorise
action before
expiration of
one month.

3. And be it enacted, that the speaker of the House of Commons shall appoint a fit person to be the taxing officer of the House of Commons, and every person so appointed shall hold his office during the pleasure of the speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the speaker.

Taxing officer
to be ap-
pointed by
the speaker.

4. And be it enacted, that the speaker may from time to time prepare a list of such charges as it shall appear to him that, after the present session of parliament, parliamentary agents, attornies, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges, and expenses in respect of the several matters therein specified: Provided always, that the said taxing officer may allow all fair and reasonable costs, charges and expenses in respect of any matters not included in such list.

The speaker
to prepare
list of charges
thenceforth
to be allowed.

5. And be it enacted, that for the purpose of any such taxation the said taxing officer may examine upon oath any party to such

Taxing officer
empowered
to examine

10 & 11 Vict.
c. 69, ss. 6—8.

parties and
witnesses on
oath.

taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master extraordinary of the high court of chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath, or in any such affidavit shall wilfully or corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Taxing officer
empowered
to call for
books and
papers.

6. And be it enacted, that the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation: Provided always, that nothing herein contained shall be construed to authorise such taxing officer to determine the amount of fees which may have been payable to the House of Commons in respect of the proceedings upon any private bill.

Taxing officer
to take such
fees as may
be allowed by
House of
Commons.

Application
of fees.

7. And be it enacted, that it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the House of Commons may from time to time by any standing order authorise and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such standing order as aforesaid.

On applica-
tion of party
chargeable,
or on appli-
cation of par-
liamentary
agent, at-
torney, or
solicitor, the
taxing officer
to tax the
bill.

8. And be it enacted, that if any person upon whom any demand shall be made by any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the House of Commons in any future session of parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in the House of Commons, or if any parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person who shall be aggrieved by the non-payment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office for the taxation of such costs, charges, and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or

neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand *ex parte*; and if pending such taxation any action or other proceeding shall be commenced for the recovery of such bill of costs, charges, and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the speaker as hereinafter provided: Provided always, that no such application shall be entertained by the said taxing officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent, or left as aforesaid: Provided also, that if any such application shall be made after the expiration of six months as aforesaid, it shall be lawful for the speaker, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

10 & 11 Vict.
c. 69, s. 9.

No applica-
tion to be
entertained
by taxing
officer after
verdict
obtained.

9. And be it enacted, that the said taxing officer shall, if required by either party, report his taxation to the speaker, and in such report shall state the amount fairly chargeable in respect of such costs, charges, and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid; and within twenty-one clear days after any such report shall have been made either party may deposit in the office of the said taxing officer a memorial, addressed to the speaker, complaining of such report or any part thereof, and the speaker may, if he shall so think fit, refer the same, together with such report, to the said taxing officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, the speaker shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges, and expenses, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified such certificate shall have the effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount: Provided always, that if such defendant shall have

Taxing officer
to report to
the speaker.

If either
party com-
plain of
report, they
may deposit
a memorial,
and the
speaker may
require a
further
report.

If no memo-
rial deposited,
speaker may
issue certifi-
cate of the
amount found
due.

Certificate to
have the
effect of a
warrant to
confess
judgment.

10 & 11 Vict. pleaded that he is not liable to the payment of such costs, charges,
c. 69, and expenses, such certificate shall be conclusive only as to the
ss. 10, 11. amount thereof which shall be payable by such defendant in case
 the plaintiff shall in such action recover the same.

Construction
 of certain
 words in this
 Act.

10. And be it enacted, that in the construction of this Act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters, or things as well as one person, matter, or thing; and every word importing the plural number shall extend and be applied to one person, matter, or thing as well as several persons, matters, or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall extend to any body politic, corporate, or collegiate, municipal, civil, or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Form of
 citing the
 Act.

11. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal and other instruments, it shall be sufficient to use the expression "The House of Commons Costs Taxation Act, 1847."

CONSTABULARY FORCE (IRELAND) ACT.

11 & 12 VICT. c. 72.

An Act to amend the Acts relating to the Constabulary Force in Ireland, and to amend the Provisions for the Payment of Special Constables.

[31st August, 1848.]

11 & 12
Vict. c. 72,
ss. 1—3.

WHEREAS it is expedient to alter and amend several provisions of the Acts relating to the constabulary force in Ireland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same.

Sections 1 and 2 are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

3. And whereas by an Act of the ninth and tenth years of the reign of her present Majesty, intituled "An Act to provide for removing the Charge of the Constabulary Force in Ireland from the Counties, and for enlarging the Reserve Force, and to make further Provision for the Regulation and Disposition of the said Constabulary Force," it was, amongst other matters, provided that the whole cost of the constabulary force, save as therein mentioned, should be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland: And whereas it is expedient to fix and determine the number of officers and men whose pay and expenses may, under the provisions of the said Act, be wholly charged upon the said consolidated fund for each county, county of a city, or county of a town in Ireland: Be it therefore enacted, that the total number of officers and men wholly chargeable as aforesaid to the said consolidated fund shall be such as the lord lieutenant or other chief governor or governors of Ireland may from time to time consider to be required in each county, city, or town, but shall not exceed in any year, after the thirty-first day of March one thousand eight hundred and forty-eight, the number specified in the Schedule (A.) to this Act annexed, for each county, city, or town named therein.

Number of
constabulary
chargeable on
Consolidated
Fund to be
fixed by lord
lieutenant,
&c.

Section 4 is repealed by 29 & 30 Vict. c. 103, s. 12.

T.

A A

11 & 12
 Vict. c. 72,
 ss. 5—7.

Proportion of
 sub-inspectors
 and head
 constables to
 additional
 force ap-
 pointed on
 certificate of
 magistrates,
 or application
 from town
 council of a
 borough.

5. And be it enacted, that in all cases where an additional constabulary force shall have been certified by the magistrates of any county at large, at any general or special sessions, as now by law provided to be necessary for the due execution of the law within such county, and shall be appointed in conformity with such certificate, and also in all cases where an additional constabulary force shall be appointed for any borough in pursuance of the provisions of the said Act of the third and fourth years of the reign of her present Majesty, it shall be lawful for the lord lieutenant or other chief governor or governors of Ireland to appoint one sub-inspector for every fifty constables and sub-constables, and one head constable for every twenty-five constables and sub-constables, who may have been so appointed; and the expense of such sub-inspectors and head constables shall be chargeable upon such county or borough respectively, and be repaid by grand jury presentment, or from the borough fund, in the same manner as the expense of the constables and sub-constables who may have been so appointed.

If constabu-
 lary shall be
 ordered under
 the authority
 of 6 & 7
 Will. 4, c. 13,
 to repair to
 any other
 place, &c.,
 and absence
 exceeds five
 days, the
 expense to
 be charged
 thereto, and
 paid by pre-
 sentment.

6. And whereas by an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to consolidate the Laws relating to the Constabulary Force in Ireland," the inspector general is authorized, subject to the direction and control of the said lord lieutenant or other chief governor or governors, from time to time as may be deemed expedient, to direct that the whole or any number of the constabulary force of any county, county of a city, county of a town, or town and liberties, shall go and repair to any place or places in any other county or counties, or in any county of a city, or county of a town, or town and liberties: And whereas in the said recited Act of the ninth and tenth years of her present Majesty, among the cases in which it was enacted that counties and districts should still be chargeable in respect of the constabulary force, the case of a portion of the force of one county temporarily sent by the inspector general into another county was not provided for; be it enacted, that whenever any officer or officers, head or other constable or constables, or sub-constable or sub-constables, shall be ordered by the inspector general, under the authority of the above-recited provision, to go and repair to any place or places in any county, county of a city, or county of a town, other than that to which he or they may belong or have been appointed, the county, county of a city, or county of a town to which he or they shall be so removed shall, in case the lord lieutenant or other chief governor or governors shall so direct, be charged with a moiety of the expense of each such officer, head constable, constable, or sub-constable during the period of his or their remaining in such last-mentioned county, county of a city, or county of a town; and the amount of such moiety shall be repaid by grand jury presentment, in like manner as any sums payable in respect of the constabulary force.

Where con-
 stabulary
 shall be re-

7. And whereas by an Act of the eighth and ninth years of her present Majesty's reign, intituled "An Act for the Appointment of

additional Constables for keeping the Peace near Public Works in Ireland," provision is made for the appointment and payment of additional head and other constables for keeping the peace in certain cases in the neighbourhood of railway works or other public works in Ireland; be it enacted, that whenever such additional head or other constables shall have been or shall be appointed and employed for the purposes and under the provisions of the said last-recited Act, the company or other parties carrying on such railway or other public works shall be chargeable for the expense of such head and other constables as in the said Act provided, but according to the proportion of head and other constables hereinbefore provided, save that such company or parties shall be chargeable for the whole and not for the moiety only of such respective rates of charge.

11 & 12
Vict. c. 72,
ss. 8, 9.

quired under
8 & 9 Vict.
c. 46, to keep
the peace near
railway
works, com-
pany, &c.
requiring the
same to pay
the expense.

8. And whereas by the said recited Act of the sixth year of the reign of King William the Fourth the inspector general is required to make out a certificate, under his hand, of the amount of the monies chargeable under the provisions of the said Act on each county, county of a city, county of a town, or any part of any county, specifying the force or service in respect whereof such charge may have been incurred, and transmit the same, when approved and certified by the chief or under secretary of the lord lieutenant or other chief governor or governors of Ireland, to the secretary of the grand jury for such county, county of a city, and county of a town, one week before each assizes and presenting term, who shall lay the same before the grand jury: And whereas doubts have arisen in some cases with respect to the sufficiency of certificates which have been laid before grand juries in pursuance of the said last-recited enactment, and it is expedient to provide a form of certificate which shall be sufficient in all such cases; be it therefore enacted, that the certificate to be transmitted by the said inspector general, or by one of his deputies, to the secretary of the grand jury of any county, county of a city, or county of a town, before any assizes or presenting term, and to be laid by the said secretary before the grand jury, shall and may be made in the form contained in the Schedule (B.) to this Act annexed, or to the like effect, and shall not be required to state any further or other particulars than such as appear in the said form; and in case of there being no inspector general, or in case of his absence, any such certificate may be signed by one of the deputy inspectors general, and shall be of like validity.

Form of cer-
tificate to be
laid before
grand juries.

9. And be it enacted, that from and after the passing of this Act the officers and men of the constabulary force shall have the same rights, powers, and authorities in and for each of the counties, counties of cities, and counties of towns immediately adjacent to that to which they may have been appointed, as if they had been appointed for such counties, counties of cities, or counties of towns respectively.

Constabulary
to act in
adjacent
counties.

11 & 12
 Vict. c. 72,
 s. 10.

6 & 7 Will. 4,
 c. 13.

2 & 3 Vict.
 c. 75.

Assistant
 inspector
 general, or
 a county
 inspector or
 sub-inspector
 appointed
 president by
 the inspector
 general or
 deputy, may
 inquire and
 examine on
 oath into the
 truth, &c.
 of charges
 against con-
 stabulary.

10. And whereas by the said recited Act of the sixth year of the reign of King William the Fourth, intituled "An Act to consolidate the Laws relating to the Constabulary Force in Ireland," it is enacted, that it shall and may be lawful for the inspector general or deputy inspector general, or any other person or persons to be nominated for the purpose from time to time by the lord lieutenant, or other chief governor or governors of Ireland for the time being, to examine on oath into the truth of any charges or complaints preferred against any person appointed under the said Act of any neglect or violation of duty in his office: And whereas by an Act of the second and third years of the reign of her present Majesty, intituled "An Act for the better Regulation of the Constabulary Force in Ireland," it is enacted, that all witnesses duly summoned by the inspector general or deputy inspector general, or person or persons nominated at any time by the lord lieutenant or other chief governor or governors to inquire pursuant to the above recited provision, shall, during their necessary attendance at such inquiry, and in going to and returning from the same, be privileged from arrest; and that all persons so duly summoned who shall refuse to be sworn, or, being sworn, shall refuse to give evidence or to answer all such questions as may be legally demanded of them, shall forfeit and incur such penalty, not exceeding five pounds, as the said inspector general or deputy inspector general, or persons holding such inquiry, shall direct, and in default of payment thereof shall and may be imprisoned for such period, not exceeding one month, as such inspector general or deputy inspector general, or person or persons holding such inquiry, may direct and adjudge; be it enacted, that from and after the passing of this Act it shall and may be lawful for either of the assistant inspectors general (without any special appointment), or for any county inspector or sub-inspector who shall be appointed by the inspector general (or in his absence by one of his deputies) to be president of any court of inquiry into the truth of any charges or complaints preferred against any member of the said constabulary force of any neglect or violation of duty in his office, to examine on oath into the truth of such charges or complaints, and to summon any witness or witnesses on such inquiry, and to act in all respects in relation thereto as effectually as can be done under the said recited Acts by the inspector general or a deputy inspector general, or by any person nominated for the purpose of holding such inquiry by the lord lieutenant or other chief governor or governors of Ireland; and the witnesses summoned to attend such inquiry shall have the same privilege from arrest, and shall be subject to the same penalties for false swearing, and for refusing to be sworn, or (being sworn) to give evidence, or to answer all such questions as may be legally demanded of them, as are provided in the said recited Acts: Provided always, that if any fine or imprisonment shall be imposed by the president of any such Court, or person or persons holding such inquiry, upon any person summoned to attend thereat, he or they shall forthwith specially report the same to the lord lieutenant or other chief governor or governors of Ireland.

11. And whereas by the said recited Act of the sixth year of the reign of King William the Fourth a certain oath is required to be taken by all persons appointed under the said Act, and to be administered by any two magistrates; be it enacted, that from and after the passing of this Act it shall and may be lawful for the said oath to be taken before and administered by one magistrate.

11 & 12
Vict. c. 72,
ss. 11—13.

Oath on
appointment
may be taken
before one
magistrate
only.

12. And whereas by the said recited Act of the sixth year of the reign of King William the Fourth the Bank of Ireland is authorized to pay the drafts of the receiver only, countersigned by the inspector general or one of his deputies for constabulary services: And whereas the receiver may, from illness, or from absence on leave granted by the lords of the treasury, be unable to draw such drafts, by which great inconvenience may arise to the public service, and for which no provision is made; be it therefore enacted, that the said receiver shall submit for the approval of the commissioners of her Majesty's treasury the name of a person to act for and under the responsibility of the said receiver and of his sureties during his illness or in his absence; and when the commissioners of her Majesty's treasury, or any three of them, shall signify to him their approval of such person to act as aforesaid, the said commissioners shall notify the same to the inspector general and to the secretary of the Bank of Ireland, whereupon it shall and may be lawful for the Governor and Company of the Bank of Ireland to pay the draft or drafts of the person so named by the receiver (and approved by the commissioners of her Majesty's treasury) to draw the same in his behalf on the account of public monies for the said constabulary force during the illness or absence of said receiver; provided that the drafts of such person shall be countersigned by the inspector general, or by one of his deputies, and shall express whether they are drawn during the illness or absence of said receiver; and the said receiver and his sureties shall be and they are hereby declared responsible for the act or acts of such person so authorized by such receiver to act in his behalf as aforesaid.

Receiver, with
consent of
Treasury, may
appoint a per-
son to act for
him, and draw
on the Bank
of Ireland, in
case of his
illness or
absence.

13. And whereas by an Act of the second and third years of the reign of his late Majesty King William the Fourth, intituled "An Act for amending the Laws in Ireland relative to the Appointment of Special Constables, and for the better Preservation of the Peace," it was amongst other things provided, that in case any tumult, riot, or affray is apprehended, it shall be lawful for any two or more Justices of the Peace, in the cases in the said Act mentioned, to appoint special constables: And whereas by the same Act power is given to the Justices, as therein mentioned, to issue orders on the treasurer of the county, county of the city, or county of the town in which such special constables shall have served, directing such treasurer to pay to the said special constables such reasonable allowance for their trouble, loss of time, and other expenses as they may deem fit: And whereas doubts have arisen in some cases as to the legality of such orders on the treasurer, in consequence of their

Orders drawn
by justices for
payment of
special con-
stables under
provisions of
2 & 3 Will. 4,
c. 108, valid.

**11 & 12
 Vict. c. 72,
 ss. 14, 15.**

having been made payable, for the sake of greater convenience, to the clerks of the respective petty sessions in whose district such special constables shall have acted, for the purpose of having the monies mentioned in such orders distributed by such clerk amongst the said constables, and by this means avoiding a multiplicity of small drafts: And whereas it is expedient, for the better preservation of the public peace, and more easy mode of carrying out the provisions of the said Act, to remove the said doubts; be it therefore enacted, that any such orders drawn in the manner last mentioned, or to the like effect, shall be as good and valid as any such orders drawn as in the said Act provided, and that it shall and may be lawful for the Grand Jury of any county, county of a city, or county of a town in Ireland, and such Grand Jury is hereby required, to present, without previous application to presentment sessions, to be raised off such county, county of a city, or county of a town, or any barony, half barony, townland, or other division or denomination of land, within which any such special constables may have served, the full amount of all sums paid by any such treasurer pursuant to any such order or orders, whether such order or orders shall have been made in favour of each individual special constable, or in favour of the clerk of the petty sessions of the district in which such special constables may have acted, for their use and benefit, and whether such orders shall have been made either before or after the passing of this Act; and in case of such orders made in favour of the clerk of the petty sessions, such clerk shall duly pay over to such constables any monies received by him by virtue of such orders, and forward to the treasurer a receipt from each constable for the amount paid to him, and a certificate from the magistrates at petty sessions that such sums have been so paid by their order.

**6 & 7 Will. 4,
 c. 13, &c.,
 and this Act,
 construed as
 one.**

14. And be it enacted, that the said recited Act of the sixth year of the reign of his late Majesty King William the Fourth, and the several Acts in force amending the same, and this Act, shall be construed together as one Act.

**Schedules to
 be part of the
 Act.**

15. And be it enacted, that the Schedules to this Act annexed shall be deemed part of this Act.

SCHEDULES to which the foregoing Act refers.

Schedule (A.) is repealed (38 & 39 Vict. c. 66).

SCHEDULE (B.)

CONSTABULARY OF IRELAND.

CERTIFICATE of the EXPENSE of CONSTABULARY FORCES to be presented by the Grand Jury of the County of _____ and to be levied on the Districts mentioned therein for the Half Year commencing _____ and ending _____.

	Amount.			Moieties.		
Expense of apprehension and conveyance of prisoners, and to be presented on the county at large.....	}					
Ditto of a force which is extra of the establishment, and to be presented on the county at large.....						
Ditto ditto ditto and to be presented on the Barony of——						
Ditto ditto ditto and to be presented on the Half Barony of——						
Ditto ditto ditto and to be presented on the Townland of——						
			£			

We do hereby certify, that the above demands, amounting to _____ are correct, and justly chargeable to, and to be levied on, the districts above mentioned.

A. B., Inspector General [*or* Deputy Inspector General] of Constabulary.

C. D., Receiver of Constabulary.

Approved and certified,
 E. F., Chief [*or* Under] Secretary.

PRIVATE BILLS COSTS (LORDS).

12 & 13 VICT. c. 78.

12 & 13
 Vict. c. 78,
 ss. 1, 2.

An Act for the more effectual Taxation of Costs on Private Bills in the House of Lords, and to facilitate the Taxation of other Costs on Private Bills in certain Cases.

[28th July, 1849.]

[See 28 & 29
 Vict. c. 27.]
 7 & 8 G. 4,
 c. 64.

WHEREAS an Act was passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled "An Act to establish a taxation of costs on Private Bills in the House of Lords:" And whereas it is expedient to repeal the same, and to make more effectual provision for taxing the costs and expenses to be charged by parliamentary agents, attornies, solicitors, and others, in future sessions of parliament, in respect of bills subject to the payment of fees in parliament, commonly called private bills, and to be incurred in complying with the standing orders of the house of lords relative to such bills, and in preparing, bringing in, and carrying the same through, or in opposing the same in, the house of lords, and to facilitate the taxation of other costs incurred in respect of private bills, in certain cases: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same.

Section 1 is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Parliamentary
 agent,
 attorney, or
 solicitor not
 to sue for
 costs until
 one month
 after delivery
 of his bill.

2. And be it enacted, that no parliamentary agent, attorney, or solicitor, nor any executor, administrator, or assignee of any parliamentary agent, attorney, or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges, or expenses in respect of any proceedings in the house of lords in any future session of parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the house of lords, until the expiration of one month after such parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, has delivered unto the party to be charged therewith, or sent by post

to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, or in the case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, in proving a compliance with this Act, to prove the contents of the bill delivered, sent, or left by him, but it shall be sufficient to prove that a bill of costs, charges, and expenses, subscribed in manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a *bonâ fide* compliance with this Act: Provided also, that it shall be lawful for any judge of the superior courts of law or equity in England or Ireland, or of the court of session in Scotland, to authorise a parliamentary agent, attorney, or solicitor to commence an action or suit for the recovery of his costs, charges, and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

12 & 13
Vict. c. 78,
ss. 3, 4.

Evidence of
delivery of
bill.

Power to
judge to
authorise
action before
expiration of
one month.

3. And be it enacted, that the clerk of the parliaments, when discharging the duties of his office in person, or in his absence the clerk assistant, shall appoint a fit person to be the taxing officer of the house of lords; and every person so appointed shall hold his office during the pleasure of the clerk of the parliaments or clerk assistant, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the clerk of the parliaments or clerk assistant.

Taxing officer
to be
appointed by
the clerk of
parliaments
or clerk
assistant.

4. And be it enacted, that the clerk of the parliaments, when discharging the duties of his office in person, or in his absence the clerk assistant, may from time to time prepare a list of such charges as it shall appear to him that, after the present session of parliament, parliamentary agents, attornies, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges, and expenses in respect of the several matters therein specified: Provided always, that the said taxing officer may allow all fair and reasonable costs, charges, and expenses in respect of any matters not included in such list.

The clerk of
parliaments
or clerk
assistant to
prepare list
of charges
thenceforth to
be allowed.

12 & 13
 Viet. c. 78,
 ss. 5-8.

Taxing officer
 empowered to
 examine
 parties and
 witnesses on
 oath.

5. And be it enacted, that for the purpose of any such taxation the said taxing officer may examine upon oath any party to such taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master extraordinary of the High Court of Chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath or in any such affidavit shall wilfully or corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.

Taxing officer
 empowered to
 call for books
 and papers.

6. And be it enacted, that the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation.

Taxing officer
 to take such
 fees as may be
 allowed by
 house of lords.

7. And be it enacted, that it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the house of lords may from time to time by any order authorise and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such order as aforesaid.

Application of
 fees.

On application
 of party
 chargeable, or
 on application
 of parlia-
 mentary
 agent,
 attorney, or
 solicitor, the
 taxing officer
 to tax the bill.

8. And be it enacted, that if any person upon whom any demand shall be made by any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the house of lords in any future session of parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in, the house of lords, or if any parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, who shall be aggrieved by the non-payment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office for the taxation of such costs, charges, and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand *ex parte*; and if pending

such taxation any action or other proceeding shall be commenced for the recovery of such bill of costs, charges, and expenses, the Court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the clerk of the parliaments or clerk assistant as hereinafter provided: Provided always, that no such application shall be entertained by the said taxing officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent, or left as aforesaid: Provided also, that if any such application shall be made after the expiration of six months as aforesaid it shall be lawful for the clerk of the parliaments or clerk assistant aforesaid, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

13 & 13
Vict. c. 78,
s. 9.

No application to be entertained by taxing officer after verdict obtained.

9. And be it enacted, that the said taxing officer shall report his taxation to the clerk of the parliaments or clerk assistant as aforesaid, and in such report shall state the amount fairly chargeable in respect of such costs, charges, and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid, and shall also state in such report the amount due in respect of the said costs, charges, and expenses; and within twenty-one clear days after any such report shall have been made either party may deposit in the office of the clerk of the parliaments a memorial, addressed to the clerk of the parliaments or clerk assistant as aforesaid, complaining of such report, or any part thereof, and such clerk of the parliaments or clerk assistant as aforesaid may, if he shall so think fit, refer the same, together with such report, to the said taxing officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, such clerk of the parliaments or clerk assistant as aforesaid shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges, and expenses, and the amount due in respect of the same, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified to be due such certificate shall have the effect of a warrant of attorney, to confess judgment; and the Court in which such action shall be commenced, or any judge thereof, shall, on production of such certi-

Taxing officer to report to the clerk of the parliaments.

If either party complain of report, they may deposit a memorial, and the clerk of the parliaments may require a further report.

If no memorial deposited, clerk of the parliaments may issue certificate of the amount found due.

Certificate to have the effect of a warrant to confess judgment.

13 & 13
 Vict. c. 78,
 ss. 10—12.

cate, order judgment to be entered up for the sum specified in such certificate, in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount: Provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges, and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

Taxing officer of either house may tax costs not otherwise taxable under the Act by virtue of which any bill shall be taxed; and may request other officers to assist him.

Such officers to have the same powers as in taxing other costs.

10. And be it enacted, that if any bill of costs taxable by virtue of this Act, or of "The House of Commons Costs Taxation Act, 1847," shall comprise any costs, charges, and expenses incurred in respect of a private bill, but not taxable by virtue of the Act in pursuance whereof such bill shall come to be taxed, it shall be lawful for the taxing officer of the house of lords, or for the taxing officer of the house of commons, as the case may be, either to tax and settle such last-mentioned costs, charges, and expenses, or to request the taxing officer of the other house of parliament, or the proper officer of any other Court having such an officer, to assist him in taxing and settling any part of such bill; and such officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same; and in taxing such costs, charges, and expenses the taxing officer of the house of lords and the taxing officer of the house of commons respectively shall have the same powers and may receive the same fees in respect of such taxation as if such costs, charges, and expenses were taxable by virtue of this Act, or of "The House of Commons Costs Taxation Act, 1847," as the case may be; and the proper officer of any Court so requested to tax the same shall have the same powers and may receive the same fees as upon a reference from the Court of which he is such officer.

Taxing officers to include certain costs in their reports, and certificate the amount to be delivered.

11. And be it enacted, that the taxing officer of the house of lords, or the taxing officer of the house of commons, as the case may be, may include the amount of such last-mentioned costs, charges, and expenses in the report of his taxation of any such bill of costs; and in case the clerk of the parliaments or clerk assistant, or the speaker of the house of commons, as the case may be, shall deliver a certificate of the amount so ascertained and declared in such report, including such last-mentioned costs, charges, and expenses, such certificate shall have the same force and effect as if the whole of such bill of costs were taxable by virtue of the Act in pursuance whereof such certificate shall be so delivered.

Officers of other Courts may request the taxing officer of either house to tax parts of bills.

12. And be it enacted, that in case the taxing officer of the house of lords, or the taxing officer of the house of commons, shall be requested by the proper officer of any other Court to assist him in taxing and settling any costs, charges, and expenses incurred in respect of a private bill, being part of any bill of costs which shall have been referred to him by the Court of which

he is such officer, such taxing officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same, and shall have the same powers and may receive the same fees in respect of such taxation as if application had been made to him for the taxation thereof in pursuance of this Act, or of "The House of Commons Cost Taxation Act, 1847," as the case may be.

12 & 13
Vict. c. 78,
ss. 13—15.

13. And be it enacted, that it shall be lawful for the taxing officer of the house of lords and for the taxing officer of the house of commons to take an account between the parties to any taxation under this Act or "The House of Commons Costs Taxation Act, 1847," of all sums of money paid or received in respect of any bill of costs which is the subject of such taxation, or any matters contained therein, and to report the amount of all such sums of money and the amount due in respect of such bills of costs.

Taxing officer
of either house
may take an
account
between the
parties.

14. And be it enacted, that in the construction of this Act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters, or things, as well as one person, matter, or thing; and every word importing the plural number shall extend and be applied to one person, matter, or thing, as well as several persons, matters, or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall extend to any body politic, corporate, or collegiate, municipal, civil, or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Construction
of certain
words in this
Act.

15. And be it enacted, that in citing this Act in other Acts of parliament, and in legal and other instruments, it shall be sufficient to use the expression "The House of Lords Costs Taxation Act, 1849."

Form of citing
the Act.

THE RAILWAY CLEARING ACT, 1850.

13 & 14 VICT. c. 33 (LOCAL).

13 & 14
 Vict. c. 33,
 s. 1.

An Act for regulating legal Proceedings by or against the Committee of Railway Companies associated under the Railway Clearing System, and for other Purposes.

[25th June, 1850.]

WHEREAS for some time past arrangements have subsisted between several railway companies for the transmission without interruption of the through traffic in passengers, animals, minerals, and goods passing over different lines of railway, for the purpose of affording, in respect to such passengers, animals, minerals, and goods, the same or the like facilities as if such lines had belonged to one company, which arrangements are commonly known as and in this Act are designated as "the clearing system," and which arrangements are conducted under the superintendence of a committee appointed by the boards of directors of such several railway companies, which committee is in this Act designated "the committee," and the business of such committee has heretofore been and is now carried on at a building appropriated for the purpose in Seymour Street, adjoining the Euston Station of the London and North-Western Railway Company: And whereas the clearing system has been productive of great convenience to the public, and of a considerable saving of expense in the transmission of passengers, animals, minerals, and goods over the lines of the several railway companies parties to such association; but considerable difficulty has been experienced in carrying into effect the objects of the association, in consequence of the committee not possessing the power of prosecuting or defending actions or suits, or taking other legal proceedings: And whereas George Carr Glyn, Esquire, is the present chairman, and Kenneth Morison is the present secretary of the committee: And whereas the purposes aforesaid cannot be effected without the authority of parliament: May it therefore please your Majesty that it may be enacted; and be it enacted by the queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the several companies which at the time of the passing of this Act are parties to the clearing system, and every other com-

Companies
 parties to the
 clearing
 system to be
 subject to the
 provisions of
 this Act.

pany which shall in manner hereafter mentioned become party to the same, shall be subject to the provisions of this Act.

13 & 14
Vict. c. 33,
ss. 2—6.

2. And be it enacted, that if any company which may not be a party to the clearing system shall, by writing sealed with the common seal of such company, request the committee to admit such company to be a party to the clearing system, and the committee shall assent to such request, such company shall from the time of such assent being given, or at such other time as may be specified in the said request, become a party to the clearing system.

Other companies may join, with assent of committee.

3. And be it enacted, that if any company shall, by writing sealed with the common seal of such company, give notice to the committee of the desire of such company to cease to be a party to the clearing system, such company shall, at the expiration of one calendar month from the time when such notice shall be given, or if a more distant time shall be stated in such notice then at the time so stated, cease to be a party to the clearing system.

Companies may retire, on giving notice.

4. And be it enacted, that if not less than two-thirds of the committee present at a meeting specially summoned shall, by writing signed by their secretary, or by two members of the committee, give notice to any company that such company shall cease to be a party to the clearing system at a time named in such notice, not being less than one calendar month from the time of giving such notice, such company shall at the time so named cease to be a party to the clearing system.

Committee may give company notice to retire.

5. And be it enacted, that each company party to the clearing system shall at all times be entitled to be represented on the committee by one delegate appointed by the board of directors of such company from time to time, such appointment to be certified in writing by the secretary or any two directors of such company: Provided always, that, notwithstanding any company may happen to be unrepresented by a delegate at any meeting, the acts of the committee shall be valid.

Each company to appoint a member of the committee.

6. And be it enacted, that the committee shall meet at one of the clock in the afternoon of the second Wednesday in the months of March, June, September, and December in every year, or so soon thereafter as a quorum shall be assembled, and at any other times whereof the secretary shall, at the written request of the chairman for the time being, or any two members of the committee, give at least ten days' notice in writing to every company party to the clearing system, or the secretary of every such company; and every such meeting may be adjourned from time to time and from place to place as the committee shall think proper; and meetings and adjourned meetings of the committee shall be held at the said building in Seymour Street, except when the committee shall have appointed some other place, and then at such other place; and in order to constitute a meeting of the committee

Meetings of the committee, quorum, &c.

13 & 14
 Vict. c. 33,
 ss. 7-10.

there shall be present at least ten members; and, except where otherwise provided, all questions at every meeting shall be determined by the majority of votes of the committee present, and in case of an equal division of votes, the chairman of the meeting shall have a casting vote, in addition to his vote as one of the committee; and notice of the business to be brought before any meeting shall, at least six days before the day of such meeting, be given to every company party to the clearing system, or the secretary of every such company.

Appointment
 of the chair-
 man.

7. And be it enacted, that until the first meeting of the committee which shall be held after the passing of this Act the said George Carr Glyn, or other the chairman of the committee for the time being, shall continue in office; and at the first meeting of the committee which shall be held after the passing of this Act and in the month of March in each succeeding year, the committee present at the meeting shall, if they think fit, either continue in office the chairman for the time being, or choose another chairman; and a general meeting of the committee specially summoned shall have power to remove any chairman; and if any chairman shall die, or resign, or be removed, the committee shall have power, as soon as may be, to choose some other person to fill the vacancy thereby occasioned; but every chairman elected to supply a vacancy other than at a general meeting in the month of March in any year shall continue in office so long only as the person in whose place he shall be so elected would have been entitled to continue if such death, resignation or removal had not happened: Provided always, that it shall not be necessary that the person chosen as chairman be a delegate of any of the companies parties to the clearing system; but in case he shall not be a delegate he shall not be entitled to vote on any question, unless in the case of an equality of votes, when he shall be entitled to give the casting vote.

In the absence
 of chairman
 committee to
 elect a chair-
 man.

8. And be it enacted, that if at any meeting of the committee the chairman shall not be present, the committee present shall choose one of their members to be chairman of such meeting.

Appointment
 of secretary.

9. And be it enacted, that the said Kenneth Morison shall be the secretary to the committee until he die, or resign, or be removed; and that the committee shall have the power to remove him and all future secretaries; and that in the event of the resignation, or death, or such removal as aforesaid of any secretary, the committee shall appoint a secretary to the committee.

Appointment
 of treasurer.

10. And be it enacted, that the committee may from time to time appoint a treasurer, and remove such treasurer from his appointment, and prescribe and alter the duties of the office of treasurer, and take from the treasurer such security as they shall think fit, which security may be taken in the name or names of such person or persons as the committee approve of.

11. And be it enacted, that any money which shall be received by the committee shall be held by the committee as trustees for the company or companies to whom the committee shall decide such money to be payable; but no member of the said committee shall be answerable for any such money as may be lost or withheld by reason of the misconduct, default, or insolvency of the treasurer, or of any banker or agent in whose hands the same may be, or by reason of any cause other than the personal misconduct of such member.

13 & 14
Vict. c. 33,
ss. 11—15.

As to monies
received by
committee.

12. And be it enacted, that the accounts of the clearing system, and the balances due to and from the several companies parties thereto, shall be settled and adjusted by the secretary of the committee for the time being, which secretary shall also settle and determine the amount to be from time to time contributed to the funds of the clearing system by the companies parties thereto; and in case of any difference respecting such accounts the decision of the committee, to the effect that any balance or sum is payable by any company then or theretofore party to the clearing system, shall be final and conclusive, and such sum or balance shall be a debt due to the said committee.

Accounts to
be settled,
and balance
ascertained
and declared
by the com-
mittee.

13. And be it enacted, that the committee shall, out of the funds of the clearing system, pay all the expenses of the clearing system, and all costs, charges, damages and expenses which the members of the committee, or any or either of them, shall as such members or member, or which the secretary as nominal plaintiff or defendant, or other party, on behalf of the committee, bear, sustain, or be put to, and that the members of the committee and secretary shall be completely indemnified and saved harmless out of the funds of the clearing system, and by the companies parties to the clearing system, of, from, and against all action and actions, suit and suits, proceeding and proceedings, of any sort, costs, charges, damages, and expenses, to which they, or any, or either of them may in any way be subjected, as members or member of the committee, by reason of anything which they or he may *bond fide* do or omit to do, whether such deed or omission be within their powers or not.

Expenses to
be paid out of
the funds of
the clearing
system.

14. And be it enacted, that the committee may, by action of debt in the name of their secretary, recover from any company any balance or sum which such committee shall decide to be payable by such company, whether to any other company or on account of the clearing system, and whether such company be still at the time of such decision or has then ceased to be a party to the clearing system, and whether such sum or balance shall or shall not have been previously ascertained by the secretary to be payable.

Committee
may sue for
balances or
sums due.

15. And be it enacted, that the declaration for the recovery of such sum or balance may be in the form or to the effect of the

Form of
action for the
recovery of
such balances
or sums.

13 & 14
 Vict. c. 33,
 ss. 18—20.

form given in the Schedule (A.) to this Act annexed, and that the directions contained in the said schedule for the use of the same shall be taken as part of this Act.

Evidence.

16. And be it enacted, that if the defendants in such action shall plead that they never were indebted, then, on proof that the committee decided the sum in question to be payable by the defendants, and that the defendants were either at the time of such decision or at some previous time a party to the clearing system, and in the latter case upon further proof that such sum was decided to be payable in respect of some transactions, matters, or expenses, which happened or were sustained whilst the defendants were parties to the clearing system, the plaintiff shall be entitled to a verdict on that plea.

Plea.

17. And be it enacted, that the defendants in such action may plead any matter showing that they have since the time of the decision discharged the sum or balance so decided to be payable, and shall not plead any plea with a plea denying the plaintiff to be secretary.

Entries in books.

18. And be it enacted, that the committee shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by them, and of the orders and proceedings of all their meetings, to be duly entered in books to be kept by them for that purpose; and every such entry shall be signed by the chairman of the meeting at which such appointments, contracts, orders, or proceedings respectively took place, who shall add the word "chairman" to his signature, and which entries may be made and signed either at or after the meetings to which they respectively relate; and every entry purporting to be so signed shall be received as evidence in all Courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being members of the committee, or of the signature of such chairman, or of the fact of his having been chairman, all which last-mentioned matters shall be presumed, till the contrary be proved.

Books of the committee to be *prima facie* evidence, and the committee and secretary to be competent witnesses.

19. And be it enacted, that on the trial of any such action, after it is proved to the satisfaction of the Court or judge trying the cause that such company is or had once been such a party, the books kept by the committee shall be *prima facie* evidence of the truth of the matters therein stated and contained; and the secretary, although the nominal plaintiff, and the members of the committee shall be competent witnesses, either for the plaintiff or for the defendants.

Committee may sue or be sued in the name of their secretary.

20. And be it enacted, that the committee may in all cases sue and be sued in the name of the secretary to the committee; and that in all proceedings at law and in equity, and in bankruptcy,

or of any other sort, whether civil or criminal, the name of the secretary may be used instead of the names of the members of the committee; and proofs, in cases of bankruptcy, insolvency, or in winding-up affairs, may be made by the secretary for the committee.

13 & 14
Vict. c. 33,
ss. 21—24.

21. And be it enacted, that in any indictment or information for any felony or misdemeanour wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, and the same shall either belong to the committee or be in their custody, or in the custody or possession of any officer, clerk, or servant of the committee, or of any person employed for the purpose or in the capacity of clerk or servant by the committee, or in or on any building or land used for the purposes of the clearing system, or shall be used or intended to be used for the purposes of the clearing system, it shall be sufficient to state such property to belong to the secretary of the committee.

In criminal proceedings property of committee to be deemed the property of secretary.

22. And be it enacted, that in any indictment for embezzlement, wherein it shall be necessary to state the party charged with the embezzlement to have been the clerk or servant of some master or masters, or to have been employed for the purpose or in the capacity of clerk or servant by some master or masters, and such masters shall have been the committee, it shall be sufficient in such indictment to name the secretary of the committee in every place in such indictment where the names of the members of the committee would but for this enactment be required to be inserted.

Criminal proceedings to be prosecuted in name of secretary.

23. And be it enacted, that every notice or requisition on the business of the clearing system, or given pursuant to this Act, shall be sufficient if it be in writing signed by the secretary of the committee, or secretary or other officer of the company giving the same, and if it be sent by the general post addressed to the secretary of the company for whom the same is intended, in case such notice or requisition be intended for any company, or to the secretary at the principal office of the clearing system, in case such notice or requisition be intended for the committee; and proof of such notice or requisition being deposited in any public letter box or receiving house for letters, intended to be forwarded by the general post, shall be deemed proof of the due service of such notice or requisition; and notices or requisitions for each member of the committee shall be sufficient if sent in manner aforesaid, addressed to him at the principal office of the company whom he represents.

Service of notices.

24. And be it enacted, that in all pleadings or proceedings, civil or criminal, when it shall be required to mention all the companies parties to the clearing system, or the committee, it shall be sufficient to mention the companies by the description of "The companies parties to the clearing system mentioned in the Railway Clearing Act, 1850," and to describe the committee by the

Mode in which the companies and committee are to be described in legal proceedings.

13 & 14
 Vict. c. 33,
 ss. 25—28.

description of "the clearing committee mentioned in the Railway Clearing Act, 1850," without stating the names of the individual companies and members.

Description of
 the secretary
 in legal pro-
 ceedings.

25. And be it enacted, that in all cases where the name of the secretary to the committee shall be used under the authority of this Act it shall be sufficient to name and describe him, and to state the authority for using his name, as in the form of declaration in Schedule (A.).

Actions, &c.
 not to abate
 on death or
 removal of
 secretary.

26. And be it enacted, that upon the death or removal of any secretary no action or suit or other proceeding pending in his name, as plaintiff or defendant or otherwise, either on behalf of or against the committee, shall abate or be stayed, but as soon as another secretary shall be appointed the name of such new secretary shall be thereafter used; and in an action at law such name shall, whether it be before or after judgment, be introduced by suggestion, to which no plea or demurrer shall be allowed; and the omission to make such suggestion, and an erroneous suggestion, shall be mere irregularities, and shall, on the application of the committee or of the party opposed to the committee, be rectified, but shall not otherwise be taken advantage of.

Expenses of
 Act.

27. And be it enacted, that all the costs, charges, and expenses of obtaining and passing this Act or incident thereto shall be paid by the said committee out of the first monies which shall come to their hands after the passing of this Act.

Short title
 and public
 Act.

28. And be it enacted, that this Act may be called "The Railway Clearing Act, 1850," and shall be deemed to be a public Act, and as such shall be judicially noticed.

SCHEDULE A.

To wit { *A.B.*, secretary to the clearing committee, and now named
 } by virtue of the Railway Clearing Act, 1850, by *C.D.*
 his attorney, complains of *X.Y.*, who have been summoned to answer the said *A.B.* in an action of debt, for that the clearing committee have decided that the sum of £100 is payable by the defendants, as parties to the clearing system, by means whereof an action has accrued to the said committee to demand in the name of their secretary the said sum of £100, yet the defendants have not paid the same, to the damage of the said committee of £10, and thereupon the plaintiff, by virtue of the said Act, brings suit.

Directions for using the above Form.

Substitute for A.B. the name of the secretary, and for C.D. the name of his attorney, and for X.Y. the name of the company defendant, and for the sums such sums as the case may require, and add the venue. Several counts may be inserted on the above model where several sums are sought to be recovered.

COUNTY PALATINE (PRACTICE).

13 & 14 VICT. c. 43.

An Act to amend the Practice and Proceedings of the Court of Chancery of the County Palatine of Lancaster.

[29th July, 1850.]

13 & 14
Vict. c. 43,
s. 12.

WHEREAS the Court of Chancery of the County Palatine of Lancaster is an ancient Court, and has been found greatly beneficial to the inhabitants of the said County Palatine; and it is expedient, in order to extend the advantages of the said Court, that certain alterations and improvements should be effected in the jurisdiction, practice, and proceedings thereof: And whereas the Queen's most excellent Majesty has been graciously pleased to sanction such alterations and improvements, notwithstanding that the same may affect her prerogatives and rights as Duchess of Lancaster, or may create a charge upon the revenues of the said duchy: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same:

12. And be it enacted, that all monies payable in respect of lands situate within the said County Palatine, and which are authorised to be paid into or deposited in the Bank of England to the account of the accountant general of the High Court of Chancery, under and by virtue of the "Lands Clauses Consolidation Act, 1845," or any local or special Act passed or to be passed incorporating the provisions of the said last-mentioned Act, or otherwise authorising the taking or using of lands situate in the said County Palatine, and also that all monies or securities held by any party who might be sued in the Court of Chancery of the said County Palatine in respect thereof, and which under and by virtue of an Act made and passed in the parliament held in the tenth and eleventh years of the reign of her present Majesty, intituled "An Act for better securing trust funds, and for the relief of Trustees," might be in like manner paid or transferred into or deposited in the Bank of England, to the account of the said accountant general, may, from and after the passing of this Act, be in like manner paid or transferred into or deposited in the

Money paid into Court under 8 & 9 Vict. c. 18, for lands within the county palatine, and under 10 & 11 Vict. c. 96, may be paid into the Bank of England, to the joint account of the clerk and registrar. [Amended by 17 & 18 Vict. c. 82, s. 13, post.]

13 & 14
Vict. c. 43,
s. 12.

Bank of England, to the joint account of the clerk of the council of the Duchy of Lancaster and of the registrar and comptroller of the said County Palatine Court in the matter in respect whereof such payment, transfer, or deposit shall be made, and the receipt of one of the cashiers of the said bank shall be a full discharge to the person paying or transferring, or depositing the same; and such monies and securities, and all costs of application in respect thereof, shall be dealt with by the said Court of Chancery of the County Palatine in the same manner as the same might be dealt with by the High Court of Chancery or by the lord high chancellor, or any of the judges of the said High Court, if such monies or securities had been paid or transferred into or deposited in the Bank of England to the credit of the accountant general of that Court; and the lands in respect of which such payment, transfer, or deposit shall be made may be dealt with in the same manner as if it had been made in manner prescribed by the Lands Clauses Consolidation Act: Provided always, that no monies shall be so paid or deposited under or by virtue of the "Lands Clauses Consolidation Act, 1845," or any local or special Act as aforesaid, in case the party who would have been entitled to the rents and profits of the lands in respect of which such monies shall be payable, or his or her guardian or committee in case of infancy or lunacy, shall at any time before such payment or deposit serve or cause to be served a notice in writing at the office of the company taking the lands, requesting them not to make the payment or deposit.

THE ABANDONMENT OF RAILWAYS ACT, 1850.

13 & 14 VICT. c. 83.

*An Act to facilitate the Abandonment of Railways, and the
Dissolution of Railway Companies, in certain cases.*

13 & 14
Vict. c. 83,
ss. 1-8.

[14th August, 1850.]

WHEREAS divers joint stock companies have been incorporated by Act of parliament for making railways, and it has been found that such railways, or certain parts thereof, cannot be made or carried on with advantage either to the promoters thereof or to the public, and it is expedient therefore that facilities should be given for the abandonment of such railways or parts of railways, and for the dissolution of such companies, or some of them, and winding up the concerns thereof: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any company authorised by Act of parliament heretofore passed to make a railway desire that the making and carrying on of such railway or some part thereof, whether commenced or not, be abandoned, such company may, by the authority and with the consent of the holders of three-fifths of the shares or stock of such company, represented in manner hereinafter mentioned at a general meeting of shareholders to be convened in manner hereinafter mentioned, make application in writing to the commissioners of railways,* setting forth the particulars of the railway or portion of the railway desired to be abandoned by them, and the grounds upon which such application is made.

[See The
Railway Com-
panies Act,
1867, 30 & 31
Vict. c. 127,
ss. 31-35, and
The Railways
Abandonment
Act, 1869,
32 & 33 Vict.
c. 114.]

Railway com-
pany may
make applica-
tion to Board
of Trade to be
allowed to
abandon their
undertaking.

* [Now the
Board of
Trade, 14 & 15
Vict. c. 64,
s. 1.]

2. And be it enacted, that it shall be lawful for the directors of any such railway company at any time to call a meeting of the shareholders thereof for the purpose of determining whether such application shall be made to the commissioners of railways,* and so from time to time as they shall see fit.

Directors may
call meeting
to consider
such applica-
tion.
* Board of
Trade.

3. And be it enacted, that it shall be lawful for any number of shareholders of any such company, not being less than five, and holding in the aggregate not less than one twentieth of the capital

Shareholders
may require
directors to
call meeting.

13 & 14
 Vict. c. 83,
 ss. 4, 5.

or stock of the company, consisting of shares or stock whereon all calls for the time being have been paid up, but exclusive of any shares or stock held by or in the names of the directors of the company or any of them, or by or in the name of any person in trust for the directors or any of them, or for the company, and which shareholders shall have paid all the calls then due on the shares held by them, by writing under their hands to require the directors of such company to call a meeting for the purpose aforesaid; and upon the receipt of any such requisition such directors shall forthwith proceed to call a meeting of the shareholders of such company on a day to be named by them, not being less than fourteen nor more than twenty-eight days after the receipt of such requisition: Provided always, on the default of the directors to call and advertise such meeting within fourteen days after the receipt of the requisition, it shall be lawful for the requisitionists to call such meeting themselves, at a time and place to be appointed by them, of which fourteen days notice shall be given by them by advertisement as hereinafter provided: Provided also, that when any meeting of any such company shall have been called pursuant to any such requisition as aforesaid, the directors of such company shall not be required to call any further meeting of such company upon any further requisition for the like object until twelve months shall have elapsed since the holding of such previous meeting.

After receipt of requisition, directors not to make any payments, except under existing liabilities, nor to enter into new contracts, nor to make new calls.

4. And be it enacted, that after any such meeting has been called by the directors, or after the receipt of any such requisition as aforesaid, it shall not be lawful for the directors to make any payments out of the monies of the company for the purposes of the railway proposed to be abandoned, except in discharge of *bonâ fide* debts or liabilities, or in performance of contracts or engagements previously entered into, and in payment of the expenses of calling and holding such meeting, nor to enter into any contract or engagements on behalf of the company with respect to the railway so proposed to be abandoned, nor to make any calls, nor to register the transfer of any shares, until the meeting called as aforesaid shall have determined whether such application shall be made.

Mode of calling meeting, and signifying the consent of the shareholders to the application.

5. And be it enacted, that the calling of any such meeting shall be by public advertisement in the manner required or usually adopted for advertising the extraordinary general meetings of such company, and where such meeting is called by the directors of the company a circular letter shall be sent by the post addressed to each of the registered shareholders of such company, according to his registered address or other known address, seven clear days at least before the holding of such meeting, and stating that a general meeting of the shareholders of such company will be held at a time and place mentioned in such circular, for the purpose of determining whether application shall be made to the commissioners of railways * that such railway or the part thereof specified in such notice may be abandoned, and requesting such shareholder to signify his assent to or dissent therefrom, which may be according to a form

* The Board of Trade, ante, s. 1.

to be contained in such circular letter, which form shall be to the effect set forth in the schedule hereto, and such circular letter shall request such shareholder either to return such form, signed by him, in a letter addressed to the secretary of such company, or to attend such general meeting as aforesaid, and deliver the same, so signed by him, to the chairman thereof; and in the case of every such meeting, whether called by the directors or by such requisitionists as aforesaid, the shareholders may signify their assent to or dissent from the proposed application, either by attending such meeting in person or by letter addressed to the secretary of the company, stating the assent or dissent of such shareholders, in a form which shall be to the effect of the form set forth in the schedule hereto, and signed by such shareholders respectively.

13 & 14
Vict. c. 83,
ss. 6—8.

6. And be it enacted, that at the meeting so to be called as aforesaid the scrutineers to be appointed as hereinafter mentioned shall cast up the amount of shares held by shareholders assenting to the making of such application, and the amount of shares held by shareholders dissenting therefrom, whether such assent or dissent have been signified by the shareholder sending to the secretary of the company such form as aforesaid, signed by him, or by such shareholder attending such meeting, and delivering in the same to the chairman thereof, and such scrutineers shall report to the chairman the amount of shares of the shareholders assenting to such application, and the amount of the shares of those dissenting therefrom, and the said chairman shall thereupon publicly announce to the meeting the said amounts respectively, and shall state whether or not the holders of three-fifths of the whole of such shares represented in manner aforesaid at the meeting consent to such application: Provided always, that in computing the amount of shares of the shareholders assenting or dissenting as aforesaid no share shall be taken into account the holder whereof shall not have been duly registered, or who shall not have paid all the calls then due by him upon all the shares held by him, unless such calls shall have been made within three months prior to the holding of such meeting, or if such meeting be held pursuant to a requisition of shareholders as hereinbefore provided, then three months prior to the day on which such requisition was presented to the directors.

The number of the shareholders assenting or dissenting to be ascertained by scrutineers, and reported to the chairman.

7. And be it enacted, that the chairman of directors of such company, if present, or in his absence the deputy chairman, if any, of such directors, shall be the chairman of such meeting as aforesaid, or if neither such chairman nor deputy chairman of the directors be present, any shareholder chosen for that purpose by a majority of the shareholders present at the meeting shall be the chairman thereof.

Chairman of the meeting.

8. And be it enacted, that at every such meeting the shareholders present thereat shall elect three shareholders of the company to be scrutineers for the purposes aforesaid, and in electing such scruti-

Meeting to elect scrutineers.

13 & 14
 Vict. c. 83,
 ss. 9—11.

neers each shareholder shall have one vote only, and shall vote for one scrutineer only; and the decision of such scrutineers, or of any two of them, upon any of the matters hereby intrusted to them, shall be final in all respects.

Adjournment
 of meeting on
 application of
 scrutineers.

9. And be it enacted, that for the purpose of receiving the report of the said scrutineers the chairman of such meeting may, if he think fit, on the application of any one of such scrutineers, and he shall, if required by more than one of such scrutineers, adjourn such meeting to some time to be appointed by him, not less than one clear day nor more than seven clear days from the day of holding such meeting.

Certificate of
 the chairman
 to be evidence.

10. And be it enacted, that a certificate under the hand of the chairman of the meeting, stating that such meeting as aforesaid has been duly held, and such consent given as aforesaid in cases where the same is given, shall within one week after the day of holding such meeting be deposited in the office of the said commissioners of railways.*

* Board of
 Trade, *see*
ante, s. 1.

Shareholders
 desiring
 abandonment,
 and complain-
 ing that the
 sense of the
 company has
 not been fairly
 ascertained,
 may apply to
 the Board of
 Trade.

* Board of
 Trade.

11. Provided always, and be it enacted, that if it appear to any of the shareholders of any such company who shall have signed any such requisition, or been present at any such meeting as aforesaid at which the proposal to apply to the said *commissioners to authorise the abandonment of the whole or part of a railway shall have been negatived or alleged to be negatived, either that such meeting was not duly called, or that the sense thereof was not duly taken according to the true intent and meaning of this Act, and that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application would have been given, it shall be lawful for any such shareholders, not being less in number than five, and holding in the aggregate not less than one-twentieth of the capital or stock of the company, consisting of shares or stock whereon all calls for the time being have been paid up, and which shareholders shall have paid all the calls then due on the shares held by them, to apply to the said *commissioners, setting forth in writing the grounds on which they complain of the decision alleged to have been come to at such meeting as aforesaid, and praying that a further meeting may be called, and if it appear to the said *commissioners (after hearing the parties complained of, if they desire to be heard), that there is good reason to believe that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application to the said *commissioners would have been given, the said commissioners shall certify their judgment to that effect, and shall direct a further meeting to be called by the directors of such company at the time and place to be appointed by the said *commissioners, and the said directors shall call such meeting accordingly, or in default thereof it shall be lawful for the shareholders who complained to the said *commissioners of the proceedings of the former meeting to call such

meeting, and all the provisions of this Act shall apply to any further meeting so directed to be called in like manner as to any original meeting hereinbefore authorised or required to be called.

13 & 14
Vict. c. 83,
ss. 12-14.

12. And be it enacted, that if at any such meeting any railway company shall determine, as hereinbefore mentioned, that such application as aforesaid shall be made, or if the said *commissioners shall certify as aforesaid their judgment, that if such meeting had been duly called and the sense thereof duly taken the consent of such meeting to the proposed application to the said *commissioners would have been given, then, as from the date of the resolution so come to at such meeting, or the date of the said certificate, as the case may be, the directors of such company shall not have power to proceed any further with the making of the railway, or the part thereof so proposed to be abandoned, until the decision of the *commissioners of railways with respect to such application be made, and then only in accordance with such decision.

If meeting determine that application shall be made, directors not to proceed meanwhile.

* Board of Trade.

13. And be it enacted, that if it appear to the said *commissioners that there are sufficient grounds for entertaining such application, the said commissioners shall require and direct the company making the same to give notice of such application having been made, by advertisement inserted, in a form to be approved of by the said *commissioners once in the *London, Edinburgh, or Dublin Gazette*, according as the railway or part of the railway proposed to be abandoned is situate in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part proposed to be abandoned of such railway is situated, and affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any part of such railway where the whole is proposed to be abandoned, or in which any part proposed to be abandoned, is situate, and in Ireland such notice shall also be affixed to the Roman Catholic chapel, and where there shall be no such church or chapel on some public or conspicuous place of such parish; and every such notice shall set forth within what time and in what manner any person who thinks himself aggrieved by any such proposed abandonment, and who desires to object thereto, may bring such objection before the *commissioners.

Board of Trade to direct advertisements of application.

* Board of Trade.

14. And be it enacted, that, for the purpose of ascertaining the state and condition of the company making any such application, and of inquiring into the expediency of the proposed abandonment of railway, and of determining the terms and conditions on which the same may be authorised by them, it shall be lawful for the *commissioners of railways, by themselves or by any officer appointed and specially empowered by them for that purpose, to inspect the books of accounts, minutes of proceedings, or any other books, papers, or documents in the possession or control of such

* Board of Trade.

Board of Trade to have power to inspect the company's books and other documents, and to send an

13 & 14
 Vict. c. 83,
 ss. 15, 16.

officer for
 local inspection.

* Board of
 Trade.

company, and also, if they see fit so to do, to send, at the expense of such railway company, or at the expense of any person who applies to them for that purpose, an officer to be appointed by them to inspect the railway or proposed railway or work so proposed to be abandoned, and to collect evidence on the spot relative to such abandonment; and if any such company, or any of their officers or servants, shall refuse such inspection by the said *commissioners, or any officer appointed and specially empowered by them for that purpose, or refuse or wilfully neglect to produce to the said *commissioners or any such officer, on demand, any books, papers, or documents in the possession or control of such company, every such company shall for every such refusal or neglect forfeit to her Majesty the sum of twenty pounds, and a further sum of five pounds for every day during which such refusal or wilful neglect shall be continued.

Board of
 Trade may by
 warrant
 authorise the
 abandonment
 of the railway
 or part of
 railway de-
 scribed in the
 warrant.

* Board of
 Trade.

15. And be it enacted, that upon proof to the satisfaction of the said *commissioners that such notice has been duly given, and after the expiration of the time therein appointed for bringing objections before the said *commissioners, and after considering all the objections, if any, brought before them, the said *commissioners may, if they think fit, and upon such terms and conditions as they think fit, by warrant under their seal, and signed by *two or more of the said commissioners, authorise the abandonment of the railway or portion of railway described in such warrant.

In considering
 objections of
 shareholders
 to partial
 abandonment,
 Board of
 Trade to have
 regard to local
 circum-
 stances.

Power to
 reduce or
 cancel the
 shares of the
 objectors in
 certain cases.

* Board of
 Trade.

16. Provided always, and be it enacted, that in considering the objections which may be made by any of the shareholders of any railway company to the proposed abandonment of a part only of the railway of such company, and in determining the terms and conditions on which the said *commissioners may think fit to authorise any such partial abandonment, the said *commissioners shall have regard to the local situation of the lands and residences of the shareholders so objecting with reference to the portion of railway proposed to be abandoned; and in the case of any such shareholders being original subscribers to the undertaking, and not being solicitors, agents, or engineers employed in promoting the same, and whose places of residence or lands are adjoining or near the line of the portion of railway so proposed to be abandoned, it shall be lawful for the said *commissioners, if they think fit so to do, in any direction which (under the provision hereinafter contained) they may give for reducing the capital of the company authorised to construct such railway, to provide, at the request of any such last-mentioned shareholders, that the nominal amount of the shares held by them in such company may be reduced to the amount then already paid up by them respectively, or to such other extent as the said *commissioners may think fit to order in that behalf, or the said *commissioners may, at the like request, direct any such shares to be cancelled, and a part of the monies that may have been paid up in respect of such shares, bearing such proportion to the whole as the said *commissioners having regard to all the

circumstances of the case shall think fit to determine, to be repaid to such shareholders.

13 & 14
Vict. c. 83,
ss. 17—19.

17. And be it enacted, that within one month after the day on which any such warrant as aforesaid is granted by the said commissioners the railway company to which the same applies shall cause notice thereof to be inserted in the *London, Edinburgh, or Dublin Gazette*, according as the railway or part of railway mentioned therein is situate in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such abandoned railway is situate, and to be affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any such part of such railway is situate, and in Ireland such notice shall also be affixed to the Roman Catholic chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall require all persons having any claims or demands upon the said company for compensation or otherwise, by reason of the abandonment of railway authorised by such warrant, to transmit the statement of such claims or demands to the secretary of such company, at the office or usual place of business of the same company, within four months from the date of such warrant.

Abandonment of railway to be advertised, and demands on the company for compensation to be sent in.

18. And be it enacted, that, upon proof to the satisfaction of the said *commissioners that notice of such warrant has been duly published in manner hereinbefore required, the said *commissioners shall certify the same accordingly: and such certificate shall be received in all Courts of justice or elsewhere as evidence that such notice was duly published as aforesaid.

Board of Trade to certify the due publication of the notice of the warrant.

*Board of Trade.

19. And be it enacted, that after the granting of any such warrant, and the publication of such notice thereof as aforesaid, the company shall (subject to the provisions hereinafter contained) be released from all liability to make, maintain, or work the railway mentioned in such warrant, or the part thereof thereby authorised to be abandoned, or to purchase any of the lands required for the making thereof, or to complete the purchase of any such lands for the purchase of which notice may have been given, or any contract entered into, by or on behalf of the company, or to complete any contract for or concerning the making, maintaining, or working of the railway so to be abandoned, or any other contract relating to the railway or part of railway so authorised to be abandoned which by reason of such abandonment cannot be performed: Provided always, that nothing in this Act contained shall extend to release the company from any liability to complete the purchase of any land for the purchase of which any contract may have been entered into by or on behalf of the company, and which contract may have been in part performed, or by virtue or in pursuance of which a specified sum or price as the consideration for the purchase of the lands thereby agreed to be sold to or taken by

After the granting of warrant the company to be released from liability to make the railway.

13 & 14
 Vict. c. 83,
 ss. 20—22.

the company shall have been fixed or ascertained previously to the passing of this Act, notwithstanding the time for the completion of the purchase named in such contract shall have been subsequently extended by agreement or arrangement with the company.

If the special Act merely directs that "it shall be lawful" for the company to make the railway, no duty to make it is cast upon them, nor are they bound to complete it if they have made a part (*York and North Midland Ry. Co. v. Reg.*, 1 E. & B. 858; 22 L. J. Q. B. 225).

Compensation
 to be made
 where con-
 tracts have
 been entered
 into or notice
 given.

20. Provided always, and be it enacted, that in every case in which before the granting of any such warrant any notice hath been given or contract entered into by or on behalf of the company named therein for purchasing any lands which such company were by the Acts relating thereto empowered to purchase for the purpose of constructing the railway or portion of railway so authorised to be abandoned, and from which contract such company would be relieved under the provisions hereinbefore contained, or where any contract hath been entered into for or concerning the constructing, maintaining, or working of the railway or part of railway so authorised to be abandoned, or any other contract relating thereto, which by reason of such abandonment cannot be performed, the company shall make to the owners or occupiers of and other parties interested in such lands, or being parties to such contracts as afore-said, compensation, to be determined by arbitration as hereinafter mentioned, for all injury or damage, if any, sustained by such owners, occupiers, and other parties by reason of such purchase not being completed pursuant to such notice, or by reason of such contract not being performed.

See the notes to the Parliamentary Deposits Act (9 Vict. c. 20), *ante*, and the notes to the Abandonment of Railways Act, 1869 (32 & 33 Vict. c. 114), *post*.

Compensation
 to adjoining
 landowners in
 lieu of accom-
 modation
 works.

21. And be it enacted, that where any railway or part of a railway so authorised to be abandoned shall have been then made or commenced, such company shall make to the owners and occupiers of the lands adjoining the railway or part of a railway so commenced or made, and authorised to be abandoned, compensation, to be determined by arbitration as hereinafter mentioned, for all such injury or damage, if any, as shall be sustained by such owners or occupiers by reason of the omission to make gates, passages, drains, watercourses, bridges, and such other works, for the accommodation of lands adjoining the railway, as such company would have been required to make if such railway had not been allowed to be abandoned.

Where road
 has been
 carried across
 abandoned
 line of rail-
 way by means
 of a bridge or
 tunnel, com-
 pany to make

22. And be it enacted, that where the line of any railway so authorised to be abandoned shall have been wholly or partially laid out, and any road shall have been carried across such line of railway by means of a bridge or tunnel over or under such railway, which bridge or tunnel the company to whom such railway belonged would, in case the same had not been abandoned, have been liable to keep in repair, then in every such case, except

where such bridge or tunnel shall, with the permission of the said *commissioners, be by such company removed, and such road restored to the like or an equally convenient and good state as the same was in before it was interfered with by the makers of such railway, to the satisfaction (in case of difference between such company and the owner or persons having the management of such road) of the *commissioners of railways, such company shall pay to the owner of such road, if it be a private road, or to the trustees, surveyors of highways, or other persons having the management of such road, if it be a turnpike or other public road, a sum of money, to be determined by arbitration as after mentioned, in lieu and discharge of their liability to keep such bridge or tunnel, and also the roadway over the same, in repair.

13 & 14
Vict. c. 83,
ss. 23—25.

compensation,
in lieu of
keeping
bridges, &c.
in repair,
except where
the road is
restored to its
former state.
* Board of
Trade.

23. And be it enacted, that every sum so to be paid as last aforesaid to such trustees, surveyors, or other persons as aforesaid shall be by them forthwith paid over to the treasurer of the county where the bridge or tunnel in respect of which such sum was paid is situate, and shall be by him invested in consolidated bank annuities or other public securities, and the dividends or income thereof shall, until parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the justices in quarter sessions having jurisdiction where such bridge or tunnel is situate shall order.

Compensation
to trustees
and overseers
of public
roads, how to
be applied.

24. And be it enacted, that every sum so to be paid as last aforesaid in Scotland to such trustees or other persons as aforesaid shall be by them paid into bank, and the interest to arise thereon shall, until parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the sheriff of the county in which such bridge or tunnel is situate, in case of any difficulty arising, shall direct.

Application of
monies paid.

25. And be it enacted, that the amount of the compensation so to be made in the several cases aforesaid shall be determined, in case of difference, by arbitration, in the manner provided by the Railways Clauses Consolidation Act, 1845, or the Railways Clauses Consolidation Act, Scotland, 1845, as the case may require, and for that purpose all the clauses of the said Railways Clauses Consolidation Acts with respect to the settlement of disputes by arbitration shall be deemed to be incorporated with this Act: Provided always, that no such railway company shall be liable to make any compensation in respect of damage alleged to have been sustained by reason of the abandonment of the railway or part of the railway, or the non-completion of any contract of such company in any of the cases aforesaid, unless the claim for such compensation shall have been made within six months after the publication in the *Gazette* of the notice of the warrant for such abandonment as hereinbefore provided.

Amount of
compensation
to be settled
by arbitration,
pursuant to
8 & 9 Vict.
c. 20, and
8 & 9 Vict.
c. 33.
Claims for
compensation
to be made
within six
months after
publication of
warrant for
abandonment.

13 & 14
 Vict. c. 83,
 ss. 26—28.

Company to be still liable for damage occasioned by their entry on lands for taking levels, &c. pursuant to 8 & 9 Vict. c. 18, or 8 & 9 Vict. c. 19.

26. Provided also, and be it enacted, that the authority so as aforesaid given for abandoning the making of any such railway or part of a railway shall not prejudice or affect the right of the owner or occupier of any lands to receive from such company compensation for any damage that may have been occasioned by the entry of such company upon such lands, for the purpose of surveying and taking levels, and of probing or boring to ascertain the nature of the soil, or of setting out the line of the railway, pursuant to the provisions for that purpose in the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act (Scotland), 1845, contained.

Lands purchased by the railway company to be sold within a limited time.

27. And be it enacted, that all the lands acquired by such company for the purposes of the railway or part of railway so authorised to be abandoned shall be sold by such company within the time limited or prescribed for that purpose in the warrant authorising the abandonment of such railway; and if no time be therein prescribed for that purpose, then within two years from the date of such warrant, in the manner prescribed by the said Lands Clauses Consolidation Acts with respect to the sale of superfluous lands; and for that purpose all the clauses of the said last-mentioned Acts with respect to the lands acquired by the promoters of the undertaking under the provisions of their special Act, but which are not required for the purposes thereof, shall be deemed to be incorporated with this Act: Provided always, that the offer to be made by the railway company pursuant to the said Acts to sell such lands to the person entitled to the lands from which the same were severed shall be made at a price or sum not greater than the price or sum at which such lands were purchased by such company.

Where part of a railway is authorised to be abandoned, the Board of Trade may require the capital to be reduced.
 * Board of Trade.

28. And be it enacted, that when the said *commissioners of railways, by any such warrant as aforesaid, authorise the abandonment of a part only of the railway of any railway company, they may, if they think fit, require that the capital authorised to be raised by such company in respect of such railway shall be reduced to such extent and in such manner as the said *commissioners think fit, and so that such reduction do not bear a greater proportion to the whole capital so authorised to be raised than the cost of the part of the railway so authorised to be abandoned would have borne to the cost of the whole railway; and they may also, if they think fit, in like manner reduce the amount which such company are authorised to borrow on mortgage or bond, and every such reduction shall be expressed in the said warrant; and in every such case the capital of such company, and their power of borrowing money, shall be reduced and limited in conformity with the directions for that purpose contained in such warrant; and such company shall have all the same powers for enforcing the payment of calls in respect of the shares in the capital when reduced in the manner required by the said *commissioners, and for enforcing the forfeiture of any such shares in default of pay-

ment of such calls, as such company would have had in respect of the original capital of such company if this Act had not been passed: Provided always, that nothing herein contained shall authorise the said company to reduce or interfere with any amount of capital paid up or called for before the eleventh day of February, one thousand eight hundred and fifty, and entitled to any preferential or guaranteed dividend or interest.

13 & 14
Vict. c. 83,
ss. 29—35.

29. And be it enacted, that after the granting of any such warrant as aforesaid for the abandonment of the whole railway of any railway company the powers of such company for the construction, maintenance, and management of such railway shall cease, and such company shall continue to exist only for the purpose of winding up their affairs [*and they shall accordingly, subject to the provisions herein contained with respect to the sale of lands acquired by such company for the purposes of their railway, proceed with all convenient speed to collect and to convert into money all their property and effects, and shall in the first place pay and satisfy all their debts and liabilities, and after full payment and satisfaction thereof shall distribute the surplus funds among the shareholders of the company in proportion to their shares and interests therein, and for the purposes aforesaid all the powers of such company shall continue in full force and effect; and when and so soon as the same shall have been fully accomplished, such company shall be dissolved, and cease to exist*].

After warrant for abandonment of the whole railway the powers of the company are to cease, except for winding up. [Repealed by 32 & 33 Vict. c. 114, s. 10.]

Sections 30, 31, 32, and 33, are repealed by 32 & 33 Vict. c. 114, s. 10.

34. And be it enacted, that in the event of the affairs of any such company being wound up under any such petition, the compensation hereinbefore directed to be given to the owners and occupiers of lands and others in respect of the damage sustained by them by reason of such abandonment in the cases hereinbefore mentioned, or by reason of the non-completion of any such contract as aforesaid, or otherwise, shall be deemed a demand claimed from, and when ascertained in the manner provided by this Act a debt due from, such company, and the party by whom such compensation is claimed shall be deemed a "creditor," in England or Ireland, within the provisions of the said Joint Stock Companies Winding-up Act, or, in Scotland, within the provisions of the said recited Act of the second and third years of the reign of her present Majesty; and in case any lands purchased by such railway company shall be sold by the official manager under the said Act, they shall be sold in the manner and subject to the provisions contained in this Act.

In case of petition for winding up, landowners are to be deemed creditors in respect of the compensation given by this Act.

35. Provided always, and be it enacted, that this Act, or any proceeding thereunder, shall not prejudice or affect [*any action or suit or other proceeding at law or in equity commenced before the eleventh day of February one thousand eight hundred and fifty, or any action or suit brought in connection with and during the*]

Act not to affect actions or suits commenced before 11th Feb. 1850.

* 21st May, 1867, by 30 & 31 Vict. c. 127, s. 31.

13 & 14
 Vict. c. 83,
 ss. 36—38.

dependence of and involving the same matter with such action or suit, nor] any action, suit, or other proceeding against a company which shall not have obtained a warrant authorising the abandonment of the railway or part of a railway in respect of which such action, suit, or other proceeding shall be instituted, unless such company shall, within three days after notice for that purpose from the party suing them, give such party notice of their intention to apply for such warrant, and shall obtain the same, and serve notice thereof on such party within three calendar months thereafter, but all such actions and suits and other proceedings shall be proceeded with, and judgments recovered, and rules, orders, and decrees made therein shall be enforced, as if this Act had not been passed, save only that the same, after notice given by the company of their intention to abandon as aforesaid, shall be suspended for three calendar months, if the warrant be refused, or be not obtained within that time.

The words from "any action or suit or other" to "suit nor" are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Nothing herein to authorise abandonment of any railway agreed to be constructed, without consent.

36. Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend to authorise the abandonment by any company of any railway or portion of a railway, or other works, which such company has agreed under its corporate seal to make and construct, according to any agreement entered into either with any individual or with any other company, unless such individual or company shall consent in writing to such abandonment.

Board of Trade to report to parliament where abandonment authorised by them.
 * Board of Trade.

37. And be it enacted, that in each case in which the said *commissioners authorise the abandonment of the whole or a portion of a railway, they shall, within ten days after issuing their warrant for that purpose, if parliament be then sitting, or if not, then as soon thereafter as parliament meets, lay before both houses of parliament a copy of every such warrant, accompanied by such report and observations as shall in the judgment of such *commissioners set forth and explain the reasons for their award and warrant in every such case as aforesaid.

Interpretation of terms.

38. And be it enacted, that the following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say) ;

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number :

Words importing the masculine gender shall extend to females :

The word "person" shall include body corporate :

The word "lands" shall include messuages, tenements, and hereditaments :

The word "railway" shall include all works, buildings, and undertakings authorised to be constructed or carried on in connection with the railway or belonging thereto :

The word "shares" shall include stock :

The word "month" shall mean calendar month.

13 & 14
Vict. c. 83,
s. 39.

39. And be it enacted, that in citing this Act in other Acts of parliament, and in legal and other instruments and proceedings, it shall be sufficient to use the expression "the Abandonment of Railways Act, 1850."

Short title.

SCHEDULE referred to by the foregoing Act.

(1.) Name of Railway.	(1.) Name of Shareholder.	(1.) No. and Amount of Shares or Stock held by him.	(2.) Whether assenting or dissenting.

(1.) The secretary will insert these particulars.

(2.) In this column the shareholder will write the word "assenting" or "dissenting," as the case may be, and sign his name thereunder.

THE PRELIMINARY INQUIRIES ACT, 1851.

14 & 15 VICT. c. 49.

14 & 15
Vict. c. 49,
ss. 1—3.

An Act to repeal an Act of the eleventh and twelfth years of her present Majesty, for making preliminary inquiries in certain cases of applications for Local Acts, and to make other provisions in lieu thereof. [1st August, 1851.]

11 & 12 Vict.
c. 129.

WHEREAS an Act was passed in the session of parliament holden in the eleventh and twelfth years of the reign of her present Majesty, chapter one hundred and twenty-nine: And whereas it is expedient to repeal the said Act, and to make other provisions in lieu thereof: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same:

Section 1 is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Where works
proposed on
tidal lands,
Admiralty
may require
statements,
&c.

2. Whenever application shall be made to parliament for a bill whereby power is sought to construct any works on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, or to construct any bridge, viaduct, or other work across any creek, bay, arm of the sea, or navigable river, or to construct any work affecting the navigation of any harbour, port, tidal water or navigable river, it shall be lawful for the lord high admiral, or for the lords commissioners for executing the office of lord high admiral, to require the promoters of such bill to deposit at the office of the admiralty, in addition to the plans, sections, or other documents which may have been deposited at such office in compliance with the standing orders of either house of parliament, all such statements and other documents as the said lord high admiral or lords commissioners shall deem necessary to explain the objects of the intended applications to parliament, and the proposed interference with such tidal lands or navigation, as the case may be.

Admiralty
may appoint
inspectors.

3. It shall be lawful for the said lord high admiral or lords commissioners, if they shall consider the same necessary or expedient, but not otherwise, to appoint a competent person or persons to be

an inspector or inspectors, for the purpose of inquiring, in such manner and at such time and place as they shall direct, into all such matters as they shall deem necessary to enable them to report to parliament their opinion upon every such bill touching the jurisdiction or authority of the lord high admiral.

14 & 15
Vict. c. 49,
ss. 4—6.

4. For the purposes of such inquiry the said inspector or inspectors may, by summons under his or their hands, summon before him or them any person having the custody of any map, survey, or book made or kept in pursuance of any Act of parliament, to produce such map, survey, or book for his or their inspection, and the said inspector or inspectors may summon, in manner aforesaid, any other person whose evidence shall, in the judgment of the said inspector or inspectors, be material to his or their inquiries, and pay or allow to every such person so summoned by him or them the reasonable charges of his attendance; and the said inspector or inspectors shall also have power to administer an oath to all persons who may be examined by him or them touching the premises.

Inspectors
may summon
witnesses and
examine them
upon oath.

5. Any person, being summoned by such inspector or inspectors, who, after the delivery to him of such summons as aforesaid, or of a copy thereof, shall wilfully neglect or refuse to attend in pursuance of such summons, or to produce such maps, surveys, books, or other documents as he may be required to produce under the provisions hereinbefore contained, or to answer upon oath or otherwise such questions as may be put to him by such inspector or inspectors under the powers herein contained, shall be liable to forfeit and pay a penalty not exceeding five pounds, which may be recovered before any two or more justices having jurisdiction within the town, district, or place wherein such inquiry shall be held; and on conviction of the offender, and in default of payment of any such penalty, such justices shall be empowered and required to cause the same to be levied by distress and sale of the goods and chattels of the offender, by warrant under their hands and seals; and such penalty shall be paid to the treasurer of the county within which such conviction shall take place in aid of the county rate; provided that no person, other than the promoters of the proposed Act, or their agents, shall be required to attend in obedience to any summons, unless the reasonable charges of his attendance be paid or tendered to him, nor to travel in obedience thereto more than ten miles from his usual place of abode.

Penalty for
non-attend-
ance or refus-
ing to answer
questions.

6. Before instituting any such inquiry the said lord high admiral or lords commissioners may, if they think fit, require and take such security for the payment of the whole or any part of the costs, charges, and expenses to be incurred by them in respect of such inquiry (including the remuneration of the inspectors) as to them shall seem fit; and whenever any such security is given, the costs, charges, and expenses in respect whereof it is given shall, to such amount as shall be certified by the said lord high admiral or lords commissioners (not exceeding the extent or amount of such

Admiralty
may take
security for
payment of
expenses of
inquiry.

14 & 15
Vict. c. 49,
ss. 7, 8.

security), be a debt due to her Majesty from the person or persons respectively by whom the same is entered into.

Petitioners
for private bill
to be deemed
the promoters.

7. The persons whose names shall be subscribed to the petition for any private bill shall be deemed to be promoters of such bill for all the purposes of this Act, notwithstanding the persons subscribing such petition shall have signed for or on behalf of any other party.

Form of citing
the Act.

8. In citing this Act in other Acts of parliament, and in legal and other instruments, it shall be sufficient to use the expression "The Preliminary Inquiries Act, 1851."

COMMISSIONERS OF RAILWAYS ACT REPEAL.

14 & 15 VICT. c. 64.

An Act to repeal the Act for constituting Commissioners of Railways.

[7th August, 1851.]

14 & 15
Vict. c. 64,
ss. 1, 2.

WHEREAS an Act was passed in the session holden in the ninth and tenth years of her Majesty (chapter one hundred and five), for constituting commissioners of railways: And whereas it is expedient that the said Act should be repealed, and provision be made for the exercise and performance of the powers and duties which since the passing of the said Act have been vested in or imposed on the said commissioners: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

9 & 10 Vict.
c. 105.

1. From and after the tenth of October one thousand eight hundred and fifty-one the said Act shall be repealed, and all powers, rights, authorities and duties vested in or exercised or performed by the commissioners of railways under any Act passed since the passing of the said recited Act, or which may be passed during the present session of parliament, shall be transferred to and vested in and performed by the lords of the committee of her Majesty's privy council for trade and foreign plantations as if they had been named in such Acts instead of the said commissioners.

Recited Act repealed, and powers, &c. of commissioners of railways under subsequent Acts transferred to Board of Trade.

Some words at the end of the section which are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), are omitted.

2. It shall be lawful for the lords of the said committee, with the approval of the commissioners of her Majesty's treasury, to continue, for the transaction of the business transferred to the lords of the said committee under this Act, all or any of the officers and servants appointed by the said commissioners of railways, and from time to time, with such approval, to remove such officers and servants, or any of them.

Power to continue officers appointed by commissioners of railways.

14 & 15 Vict.
c. 64, s. 3.

Appoint-
ments, orders,
&c. of the
Board of
Trade how to
be signified.

3. Where by any Act relating to railways or to any railway the commissioners of railways or the lords of the said committee are empowered or required to make or issue any appointment, authority, determination, order, requisition, regulation, certificate, or notice, or to do any other act, the lords of the said committee may signify such appointment, authority, determination, order, requisition, regulation, certificate, notice, or other act by a written or printed document, signed by one of the joint secretaries of the lords of the said committee, or by some assistant secretary, or other officer appointed by them to sign documents relating to railways; and every appointment, authority, determination, order, requisition, regulation, certificate, notice, or other act signified by a written or printed document purporting to be so signed as afore-said, shall be deemed to have been duly made, issued, or done by the lords of the said committee; and every such document shall be received in evidence in all Courts and before all justices and others, without proof of the authority or signature of such secretary or other officer, or other proof whatsoever, until it be shown that such document was not signed by the authority of the lords of the said committee.

LANDS CLAUSES ACT, 1851 (IRELAND).

14 & 15 VICT. c. 70.

An Act to alter and amend certain provisions of the Lands Clauses Consolidation Act, 1845, so far as relates to Ireland.

14 & 15
Vict. c. 70,
ss. 1, 2.

[7th August, 1851.]

WHEREAS, on account of circumstances connected with the tenure of land in Ireland, the provisions of the Lands Clauses Consolidation Act, 1845, are found to be unsuited to the existing condition of that country, and it is expedient that some provision should be made for ascertaining the purchase-money or compensation to be paid by railway companies in Ireland for the lands required for their undertakings, and for determining differences with respect to the works to be made and maintained by such companies for the accommodation of the owners and occupiers of lands adjoining such railways: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. In citing this Act in other Acts of Parliament, legal instruments, proceedings at law or in equity, and all other instruments, and proceedings whatsoever, it shall be sufficient to use the expression "The Railways Act (Ireland) 1851."

Short title.

2. This Act shall apply to every railway in Ireland authorised to be made by any Act passed in this session of parliament, or which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such railway, and also to every railway or portion of a railway in Ireland by any Act heretofore passed authorised to be made in relation to which the compulsory powers for taking lands are still in force, and this Act shall be incorporated with and form part of the Acts authorising the said undertakings: Provided always, that this Act shall not apply to the railways authorised to be made by "The Waterford and Limerick Railway Amendment Act, 1850," "The Dublin and Drogheda Railway Act, 1850," "The Dundalk and Enniskillen Railway Act, 1850," and "The Midland Great Western Railway

Act to apply to railways in Ireland authorized in this session, &c. and to those heretofore authorized, except 13 & 14 Vict. c. xxix. 13 & 14 Vict. c. xlv. 13 & 14 Vict. c. lxxvi. 13 & 14 Vict. c. lxxxviii.

14 & 15
Vict. c. 70,
ss. 3, 4.

14 & 15 Vict.
c. cx.
14 & 15 Vict.
c. ciii.

of Ireland (Deviation and Amendment) Act, 1850," "The Waterford and Limerick Railway Deviation Act, 1851," and "The Killarney Junction Railway Act, 1851," "The Longford Line and Liffy Branch, 13 & 14 Vict." or to which the provisions of such Acts respectively are applicable, and shall not in anywise interfere with or affect the provisions of such Acts.

Certain provisions of
8 & 9 Vict.
c. 18, not to
apply to this
Act.

3. The clauses of "The Lands Clauses Consolidation Act, 1845," with respect to the purchase and taking of lands otherwise than by agreement, except sections sixteen and seventeen of the said Act, shall not be applicable or in force with respect to any railway or portion of a railway in Ireland to which this Act applies.

Company to
deliver maps,
schedules, and
estimates at
the office of
commissioners
of public
works, and
deposit copies
with clerks of
the peace and
clerks of
unions.

4. When and so often as any company authorised to make a railway to which this Act applies shall require to purchase or take any lands which they are by the special Act authorised to purchase or take, the company shall cause to be made out, and to be signed by their engineer and secretary, maps or plans and schedules of the lands so required (and for the purchase of which lands, or of all the several interests in which lands, the company shall not have contracted), and also of the works which the company propose to make and maintain for the accommodation of lands adjoining the railway (and for compensation in lieu of which the company shall not have contracted), together with the names of the owners or reputed owners, lessees, or reputed lessees, and occupiers of the said lands respectively, so far as the same can be reasonably ascertained, with estimates of the gross annual value and the value in fee of such lands so required to be purchased or taken as aforesaid, and for the purchase of which, or of all the several interests in which the company shall not have contracted, and the separate and distinct value of each such interest which the company shall not have contracted to purchase, so far as the same can be reasonably ascertained (taking into consideration damage by severance, and any other matters by the Lands Clauses Consolidation Act, 1845, required to be considered, if necessary); and every such map or plan shall be upon a scale of not less than one inch to every two hundred feet; and all lands, buildings, yards, and courtyards, and lands within the curtilage of any building, and ground cultivated as a garden, shall be marked thereon with distinct numbers corresponding with the numbers marked upon the parliamentary plans of the railway, and shall have put thereon a distinct valuation to each number, and all bridges, roads, and other works proposed to be made for the use and accommodation of the owners, lessees, and occupiers of the lands adjoining the railway shall also be marked on the said maps or plans; and the company shall deposit such maps or plans, schedules and estimates, at the office of the commissioners of public works in Ireland, and a copy of such maps or plans, schedules and estimates, or so much thereof as relates to every county in or through which the railway is proposed to be made, with the clerk of the peace of each such county, and a copy of so much of the said maps or plans, schedules and estimates, as

relates to each electoral division in which any such lands shall be situate, with the clerk of the poor law union in which every such electoral division is situate.

14 & 15
Vict. c. 70,
ss. 5—8.

5. After such deposit at the office of the said commissioners as aforesaid, it shall be lawful for the said commissioners, upon the application of the company, to appoint an arbitrator between the company and the persons interested in the lands to which such maps or plans, schedules and estimates relate, and such arbitrator shall, in relation to the lands required and the works to be made and maintained by the company, as herein mentioned, be the arbitrator under this Act; and if any such arbitrator die, or refuse, decline, or become incapable to act, the said commissioners may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed.

Commissioners of public works to appoint an arbitrator, on application of company.

6. The arbitrator may call for the production of any documents in the possession or power of the company, or of any party making any claim under the provisions of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this Act, and may examine any such party and his witnesses, and the witnesses for the company, on oath, and administer the oaths necessary for that purpose.

Arbitrator may call for documents, and administer oaths.

7. Before any arbitrator shall enter upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

Arbitrator to make and subscribe declaration.

“I, *A.B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming this Act*].

“*A.B.*

“Made and subscribed in the presence of ———.”

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

8. Upon the first appointment of an arbitrator as aforesaid, the said commissioners shall deliver to such arbitrator the maps or plans, schedules and estimates, deposited at their office as hereinbefore required; and the company shall forthwith after such appointment publish notice of such appointment, and of such deposits as hereinbefore directed with such clerk of the peace and clerks of poor law unions as aforesaid, once in the “*Dublin Gazette*,” and once in each of three successive weeks in some one and the same newspaper circulated in the county in which the lands are situate, stating the times and places of such deposits, and requiring all persons claiming to have any right to or interest in the lands required for the purposes of the railway, and specified in such maps or plans, or to have compensation for any injury to any lands

Maps, &c. deposited with commissioners of public works to be delivered to arbitrator. Notice of appointment of arbitrator, &c. to be published.

14 & 15
 Vict. c. 70,
 s. 9.

* Now 21.
 See 23 & 24
 Vict. c. 97.

injuriously affected by the execution of the works of the company, or to have any works made by the company for the accommodation of lands adjoining the railway, to deliver to the arbitrator, on or before a day fixed by the arbitrator and named in such notice (and which day shall not be earlier than * thirty-one days from the date of the insertion of the last of such newspaper notices), a short statement in writing of the nature of such claim; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the company shall publish notice of such appointment in the "Dublin Gazette."

Arbitrator to
 adjudicate
 upon compen-
 sation to be
 paid for lands
 and upon
 accommoda-
 tion works.

9. The arbitrator shall, after the expiration of the period within which such claims are required to be delivered to him as aforesaid, proceed to inquire into and adjudicate upon the value of the lands required for the purposes of the railway, and specified in such maps or plans, and the several interests in such lands, in respect of which no agreement shall have been come to between the company and the persons entitled thereto, and the purchase-money to be paid for such lands, and the compensation to be paid for injury to any lands injuriously affected by the execution of the works of the company, and to inquire and determine what works should be made and maintained by the company for the accommodation of lands adjoining the railway; and the arbitrator shall, after due inquiry and examination, frame a draft award setting forth the price or compensation to be paid by the company in respect of the several interests in the lands so required and specified or injuriously affected, and the works to be made and maintained by the company for the accommodation of lands adjoining the railway; and where any inquiry relates not only to the value of the lands to be purchased, but also to compensation claimed for injury done or to be done to any lands held therewith, the arbitrator shall award separate and distinct sums to be paid for the purchase of such lands, or of any interest therein to which the inquiry may relate, and for the damage (if any) to be sustained by reason of the severing of the lands taken from the other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the company; and such draft award, and copies thereof, or of so much thereof as relates to lands in the respective counties and electoral divisions shall be deposited as hereinbefore directed concerning the said maps or plans, schedules and estimates, and copies thereof, or of so much thereof as aforesaid; and the arbitrator shall cause notice of such award to be given to all persons entitled to payment or compensation under the same, or who shall have been heard before such arbitrator as claimants for compensation, and also shall cause notice to be published as hereinbefore directed concerning notice of the deposit of copies of the said maps or plans, schedules and estimates, or so much thereof as aforesaid, of the deposit of copies of such draft award, or of so much thereof as aforesaid, and shall in such notices

appoint a time and place, or times and places, for holding a meeting or meetings to hear objections against such draft award (the first such meeting to be not earlier than *twenty-one days after the last day of publication of the said notice), and shall hold such meeting or meetings accordingly, and thereat hear and determine any objections which may then and there be made to such draft award by any person interested therein, or adjourn the further hearing thereof, if the arbitrator see fit, to a future meeting, and may take any measures which he may deem proper for ascertaining the value of any such lands or interests as aforesaid, or the justice or propriety of any other matter of such draft award, and may from time to time, if he see occasion, appoint and hold further meetings for hearing and determining objections to such draft award, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed; and when the arbitrator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alterations (if any) as he may deem proper in the draft award, he shall make his award under his hand and seal accordingly; and every such award shall be binding and conclusive, subject to the provisions concerning traverse hereinafter contained, upon all persons whomsoever; and no such award shall be set aside for irregularity in matter of form; and every such award, and copies thereof, or of so much thereof as relates to lands in the respective counties and electoral divisions, shall be deposited as hereinbefore directed with respect to the said maps or plans, schedules and estimates, and copies thereof, or of so much thereof as aforesaid; and the company shall thereupon publish notice, as hereinbefore directed concerning notice of the deposit of copies of such maps or plans, schedules and estimates, or of so much thereof as aforesaid, of the deposit of copies of such award, or of so much thereof as aforesaid, and requiring all persons claiming to have any right to or interest in the lands the price or compensation to be paid in respect of which is ascertained by such award to deliver to the company, on or before a day to be named in such notice (such day not being earlier than thirty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the company.

14 & 15
Vict. c. 70,
ss. 10, 11.

* Now 14.
See 23 & 24
Vict. c. 97.

10. Provided always, that the arbitrator may make several awards, so as to include in a separate award the lands in each electoral division, or such portion of the lands in relation to which he is arbitrator as, having reference to the deposits to be made under this Act, the meetings to be holden, and the inquiries to be made in relation to such lands, and the convenience of the parties interested in the matter of the arbitration, he may think fit.

Separate
awards may
be made as
to lands in
the several
parishes or
otherwise.

11. Every clerk of the peace and clerk of any union is hereby required to detain the documents to be deposited with him under

Clerks of the
peace and
clerks of

14 & 15
Vict. c. 70,
ss. 13-14.

unions re-
quired to take
charge of
documents
deposited, as
provided by
7 Will. 4 &
1 Vict. c. 83.
Expenses of
the arbitrator
to be borne by
the company.

this Act in his custody, and to permit all persons interested to inspect the same, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided by an Act of the Session holden in the seventh year of king William the Fourth and the first year of her Majesty, chapter eighty-three.

12. The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which shall be incurred by the said commissioners of public works in carrying the provisions of this Act into execution, shall be paid by the company; and the amount of such costs, charges, and expenses shall from time to time be certified by the said commissioners, after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the company; and it shall be lawful for the said commissioners from time to time to require the company to deposit in the Bank of Ireland, to the credit of the said commissioners, any sum or sums of money, or to give such other security for the payment of any such costs, charges, and expenses as to the said commissioners shall seem fit; and every certificate of the said commissioners, certifying the amount of such costs, charges, and expenses, shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the company to the Crown, and shall be recoverable accordingly.

Costs of
parties.

13. It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the company; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the company in respect of such claim before the commencement of the arbitration.

Certificates of
amount of
compensation
to be delivered
by company.

14. Within thirty days from the delivery of such statement and abstract as aforesaid to the company, the company shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate under the company's seal, stating the amount of the price or compensation to which he is entitled under the said award; and where more lands than are included in one number shall be claimed by the same person, such lands, or the interests therein, may be included in one certificate, if the company think fit, such certificates to be prepared by and at the costs of the company; and where any agreement has been entered into in

respect to the value of the interest of any person in any lands, or his right to compensation, the company may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

14 & 15
Vict. c. 70,
ss. 15-18.

15. The company shall, on demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of monies specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns; and if the company wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the company in the Court of Queen's Bench in Ireland for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the company, authorized to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all monies payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the company entering on any such lands as aforesaid.

Amount mentioned in certificates to be paid to parties, on demand, &c.

16. When and so soon as the company have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the company, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

When amount mentioned in certificates is paid to parties, company may take possession.

17. In every case in which any monies are paid by any company under the provisions of this Act, for such price or compensation as aforesaid, the party receiving such monies shall give to the company a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such monies are paid, so as such receipt shall have an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase-monies mentioned in such certificate (but exclusive of the amount of compensation for damage by severance or other injury) as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the company.

Receipts duly stamped to operate as a conveyance.

18. If it appear to the company, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or

Payment of monies where parties making

14 & 15
 Vict. c. 70,
 ss. 19—25.

claims deemed
 not entitled,
 or are under
 disability, or
 title not satis-
 factorily
 deduced.

interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the company, then and in every such case the amount to be paid by the company in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of "The Lands Clauses Consolidation Act, 1845," "with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

Where no
 claim made,
 or parties
 refuse to
 accept sum
 certified,
 money to be
 paid into the
 bank.

19. Where any person claiming any right or interest in any lands shall refuse to produce his title to the same, or where the company have taken possession of any lands under the provisions of this Act in respect of the price or compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the company taking possession, or if any party to whom any such certificate has been given or tendered refuse to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the company in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of Ireland, in the name and with the privity of the accountant general of the Court of Chancery in Ireland, in manner provided by the last-mentioned clauses of "The Lands Clauses Consolidation Act, 1845," and the amount so paid into the said bank shall be accordingly dealt with as by the said Act provided; and no monies paid into the bank under this Act shall be liable to usher's poundage.

Nothing to
 prevent com-
 pany requir-
 ing further
 evidence of
 title, at their
 costs.

20. Nothing herein contained shall prevent the company from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the costs of the company.

Delivery of
 certificate
 may be
 enforced by
 Court of
 Chancery.

21. If from any reason whatever the company shall not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the company as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the costs and charges of the company, be enforced by any party or parties, by application to the High Court of Chancery in Ireland in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the company by such application as aforesaid.

Sections 22, 23, and 24 are repealed by 23 & 24 Vict. c. 97.

Company may
 deposit money
 by way of
 security while
 the office of the

25. If at any time the company be unable, by reason of the closing of the office of the accountant general of the said Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of

security as aforesaid, it shall be lawful for the company to pay into the bank, to such credit as aforesaid (subject nevertheless to being dealt with as herein provided), such sum of money as the company shall by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said accountant general's office, the solicitor for the company shall there bespeak the direction for the payment of such sum into the name of the accountant general, and upon production of such direction at the Bank of Ireland the money so previously paid in shall be placed to the credit of the said accountant general accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the report office.

14 & 15 Vict.
c. 70, s. 28.

accountant
general is
closed.

26. Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the price or compensation ascertained by any award under this Act (or any party claiming under the party so named) shall be dissatisfied with the amount in such certificate certified to be payable, and where any party claiming any interest in any monies so paid into Court as aforesaid shall be dissatisfied with the amount of the price or compensation in respect of which such monies shall be so paid into Court, and where any party interested in land adjoining any railway shall be dissatisfied with any award under this Act so far as respects any works for the accommodation of such lands thereby awarded to be made and maintained by the company, or which such party may claim to have so made and maintained, it shall be lawful for such party, at the assizes for the county in which the lands are situate, or, where the lands are situate in the county of Dublin or county of the city of Dublin, in the term next following the giving of such certificate, or the payment of such money into Court, or (if the claim be only in respect of accommodation works) the making of the award, or where such assizes are holden or such term begins within less than twenty-one days after the giving of such certificate, or the payment of such money, or the making of the award, then at the next subsequent assizes, or in the next subsequent term (as the case may be), upon giving ten days' notice in writing previously to such assizes or term respectively to the secretary of the company, of the amount or the accommodation works intended to be claimed, to have a traverse for damages entered in the Crown Book in respect of such claim, and thereupon such traverse shall be tried in like manner, and like proceedings shall be had, and subject to like provisions, as far as the same can be applied, as in the case of traverses entered for damages under the Acts for consolidating and amending the laws relating to the presentment of public monies by grand juries in Ireland: Provided always, that the sum to be awarded or allowed as the costs, charges and expenses of the trial of every such traverse for damages shall in no case exceed

Parties dis-
satisfied with
award, may
enter a
traverse at
assizes.

14 & 15
 Vict. c. 70,
 ss. 27—31.

the sum of twenty pounds, and further that no party shall have any other remedy for the purpose of impeaching the amount of any price or compensation ascertained by any such award as aforesaid, or the sufficiency of the accommodation works awarded thereby, other than by means of such traverse as aforesaid, anything in any Act to the contrary notwithstanding: Provided also, that the jury which shall try such traverse shall be sworn a true verdict to give, whether any and what damages will be sustained by the traverser, regard being had to the value of the lands of such traverser required, and to the injury to any lands of such traverser, injuriously affected by the works of the company, or (as the case may be) as to what accommodation works ought to be made and maintained by the company for the accommodation of the lands of the traverser, or to the like effect respectively, as the case may be.

Verdict on
 traverse to
 have effect of
 judgment.

27. The entry of the verdict of the jury in case of each traverse in the crown book shall be a final decision, and binding upon all parties interested, and shall have the effect of a judgment at law obtained in the Court of Queen's Bench in Ireland against the company, and may be enforced by like remedies against the company, as in the case of a judgment at law, by all parties interested therein; and in each case where a certificate shall have been delivered, such damages shall be taken and recovered in lieu of the monies expressed to be payable by the certificate, and which shall, on payment of the damages, and any costs payable by the company, be delivered up to the said company, and such receipt for such damages shall be given as is hereinbefore provided in cases of payment of monies on such certificates as aforesaid; and where such damages shall be given in respect of any land, the amount of the price or compensation in respect of which, as ascertained by an award under this Act, shall have been paid into Court, then if the amount of such damages shall be less than the amount paid into Court, the company shall, on a summary application by petition, be entitled to receive the difference between the amount of such damages and the amount of the sum paid into Court, but if the amount of such damages shall exceed the amount of the monies paid into Court, then the difference between the amount paid in and the damages shall, at the costs of the company, be paid into Court; and the payment of such difference into Court, and the payment of any costs payable by the company in respect of such traverse, shall be a good discharge to the company on any such verdict in the nature of a judgment as aforesaid.

Act to apply
 to the pur-
 chase of lands
 for extra-
 ordinary pur-
 poses.

Provisions of
 8 & 9 Vict.
 c. 18, incor-
 porated with
 this Act.

Meaning of
 "the com-
 pany."

Act to extend
 to Ireland
 only.

28. The provisions of this Act shall extend to the purchase by the company of lands for extraordinary purposes.

29. All the provisions of "The Lands Clauses Consolidation Act, 1845," shall, subject to the provisions herein contained, extend to and be taken as part of this Act, except so far as the same are inconsistent therewith.

30. In the construction of this Act the words "the company" shall mean the company constituted by the special Act.

31. This Act shall extend to Ireland only.

NAVAL FORCES.

16 & 17 VICT. c. 69.

An Act to make better Provision concerning the Entry and Service of Seamen, and otherwise to amend the Laws concerning Her Majesty's Navy. [15th August, 1853.] 16 & 17 Vict.
c. 69, s. 18.

18. Whenever it shall be necessary to move any of the officers or men in her Majesty's navy, or belonging to any naval coast volunteers, or any other officers or men under the command or government of the admiralty, every railway company shall, upon the production of a route or order for the conveyance of such officers or men, signed by any officer or person authorized by the lord high admiral or commissioners for executing the office of lord high admiral in that behalf, be bound to provide conveyance for such officers or men and their personal luggage, and also any public baggage, stores, arms, ammunition, and other necessaries and things, by the railway of such company, at the usual hours of starting, in like manner and at the like fares and rates of charge, and upon the like conditions, as under the Act of the session holden in the seventh and eighth years of her Majesty, chapter eighty-five, or any other Act applicable to such company, such company would be bound to provide such conveyance for the officers and men of her Majesty's forces of the line, ordnance corps, marines, militia and police force, and their personal luggage, and any public baggage, stores, arms, ammunition, and other necessaries and things of the said forces.

Railway companies to convey naval forces upon the same, terms as military and police.

By the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), this section is repealed except as to Ireland, and except as respecting the conveyance of forces by companies who lose the benefit of the last-mentioned Act. (See sect. 3 (3).)

THE RAILWAY AND CANAL TRAFFIC ACT, 1854.

17 & 18 VICT. c. 31.

**17 & 18 Vict.
c. 31, s. 1.** *An Act for the better Regulation of the Traffic on Railways
and Canals.* [10th July, 1854.]

[Extended to
traffic by
steamboats
belonging to
or used by
railway com-
pany,
26 & 27 Vict.
c. 92, s. 31,
31 & 32 Vict.
c. 119, s. 16,
34 & 35 Vict.
c. 78, s. 12.]
"Board of
Trade:"
"Traffic:"

WHEREAS it is expedient to make better provision for regulating the traffic on railways and canals: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act, "the Board of Trade" shall mean the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations:

The word "traffic" shall include not only passengers, and their luggage and goods, animals, and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company:

"Railway:" The word "railway" shall include every station of or belonging to such railway used for the purposes of public traffic: and,

"Canal." The word "canal" shall include any navigation whereon tolls are levied by authority of parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic:

"Company." The expression "railway company," "canal company," or "railway and canal company," shall include any person being the owner or lessee of or any contractor working any railway or canal or navigation constructed or carried on under the powers of any Act of parliament:

Stations. A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf, when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from St. Paul's church, in London.

2. Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company, and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

17 & 18 Vict.
c. 31, s. 2.

Duty of railway companies to make arrangements for receiving and forwarding traffic, without unreasonable delay, and without partiality.

[Amended by the Regulation of Railways Act, 1873, 36 & 37 Vict. c. 48, s. 11.]

Upon the question of undue preference, see, too, the notes to sect. 90 of the Railways Clauses Act, 1845.

Since the passing of this Act railway companies cannot refuse to carry traffic, which they have facilities for carrying; but they are compellable to carry it, not as common carriers, but as ordinary bailees and subject to reasonable conditions (*Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176).

A breach of this section can be restrained by injunction under section 3; but no action for damages or recovery of overcharges can be maintained (*Denaby Main Colliery Co. v. Manch., Sheff. & Linc. Ry. Co.*, 11 App. C. 97).

But the Railway Commissioners have held that a trader is entitled to "be fortified" by an injunction after the undue preference has ceased (*Macfarlane v. N. British Ry. Co.*, 4 B. & Mac. 269. See *Haslings Town Council v. S. E. Ry. Co.*, 3 N. & Mac. 179; *Newington Local Bd. v. N. E. Ry. Co.*, 3 N. & Mac. 306; *Harris v. L. & S. W. Ry. Co.*, 3 N. & Mac. 331).

This section gives power to direct a railway company to afford the facilities therein mentioned, even though the doing so may necessitate structural alterations. But there is no power to order any particular works to be carried out. The facilities to be provided must also be within the powers of the company (*S. E. Ry. Co. v. Railway Commrs.*, 6 Q. B. D. 586. See *Newington Local Bd. v. N. E. Ry. Co.*, 3 N. & Mac. 306; *Harris v. L. & S. W. Ry. Co.*, 3 N. & Mac. 331).

The company will not be ordered to provide a junction, when it is doubtful if the Board of Trade would allow it to be used (*Dublin Whiskey, &c. Co. v. Midl. G. W. Ry. Co.*, 4 B. & Mac. 32).

The facilities must be facilities required in the interests of the railway traffic (*Holyhead Local Bd. v. L. & N. W. Ry. Co.*, 4 B. & Mac. 37).

The company will not be compelled to carry damageable goods to a particular station, if there is no means of providing proper accommodation for the goods there (*Thomas v. N. Staffordshire Ry. Co.*, 3 N. & Mac. 1).

If the company refuse to carry a certain class of goods as common carriers, and require special rates to be paid for the carriage of such goods, this is a refusal of reasonable facilities within the section (*Aberdeen Commercial Co. v. Grand North of*

Act does not impose liability on common carriers.

How section enforced.

I. Facilities, structural alterations.

Refusal to carry except at special rates.

- 17 & 18 Vict. c. 31, s. 2.** *Scotland Ry. Co.*, 3 Nev. & M. 205, approved in *G. W. Ry. Co. v. Railway Commrs.*, 7 Q. B. D. 182, 194. See, too, *Chatterley Iron Co. v. N. Staffordshire Ry. Co.*, 3 N. & Mac. 238; *Young v. Gwendraeth Ry. Co.*, 4 B. & Mac. 247).
- Passengers traffic.** Owners of sidings properly constructed under the superintendence of the company's engineer are entitled, under the head of reasonable facilities, to have their trucks taken by the company, if they have been placed as near as possible to the junction, arranged in proper order and clear of obstacles (*Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co.*, 3 N. & Mac. 5; *ib.* 447; *Tharvis Copper Co. v. L. & N. W. Ry. Co.*, 3 N. & M. 455).
- With regard to passenger traffic, facilities will not be directed to be given on the complaint of an individual for his personal convenience.
- Thus an individual cannot, on the ground of personal inconvenience, force the company to provide through booking and communication on a continuous line (*Barret v. Gt. N. & Mid. Ry. Co.*, 1 N. & Mac. 38; 1 C. B. N. S. 423. But see *Innes v. J. B. & S. C. Ry. Co.* and *L. & S. W. Ry. Co.*, 2 N. & Mac. 155).
- Nor will a company, issuing third class tickets to stations within a certain distance on their line, be compelled to issue such tickets beyond that distance (*Caterham Ry. Co. v. Brighton & S. E. Ry. Co.*, 1 C. B. N. S. 410; 1 N. & Mac. 32).
- Excessive charge to passenger.** The mere fact that the company charge a passenger a higher fare than is authorised by their special Act is not a refusal of reasonable facilities within this section (*G. W. Ry. Co. v. Railway Commrs.*, 7 Q. B. D. 182).
- As to through trains, see *E. London Ry. Co. v. L. B. & S. C. Ry. Co.*, 2 N. & Mac. 413.
- II. Undue preference.** At the common law, a carrier was only bound to carry in accordance with his profession, and at reasonable rates.
- He was not bound to charge all his customers the same rate, as long as the rate charged was reasonable.
- The fact that in some cases a lower rate was charged was evidence that the higher rate was unreasonable, but it was no more than evidence (*Gt. W. Ry. Co. v. Sutton*, L. R. 4 H. L. 226, p. 237).
- Foreign contract.** The equality clauses do not apply to a contract made abroad to carry from a foreign town to a town in England, though partly over the company's line in England (*Branley v. S. E. Ry. Co.*, 12 C. B. N. S. 63).
- Limits of section.** It appears to be unsettled whether "undue preference" in this section is limited to "the receiving and forwarding and delivering of traffic," occurring in the earlier branch of the section; whether, for instance, it would be an undue preference for the company to give a coal merchant the exclusive right of storing his coal on land of the company adjoining the station (*West v. L. & N. W. Ry. Co.*, L. R. 5 C. P. 622; 1 N. & Mac. 166; see *Re Oxlade & N. E. Ry. Co.*, 1 C. B. N. S. 454; 26 L. J. C. P. 129; 1 N. & Mac. 72; see *Locke v. N. E. Ry. Co.*, 3 N. & Mac. 44).
- There can be little doubt that the railway commissioners would not construe the statute in the more limited sense, and Mr. Justice Lush seems to have been of the same opinion (see 5 Q. B. D. 242, 243).
- It is settled that the operation of this section is not to be limited to charges made after the goods have actually come upon the railway. It extends to cartage as well (*L. & N. W. Ry. Co. v. Evershed*, 3 Q. B. D. 135; 3 App. C. 1029).
- Transit by sea.** This section has been held not to apply to transit by sea (*Branley v. S. E. Ry. Co.*, 12 C. B. N. S. 63; 31 L. J. C. P. 286; *Napier v. Glasgow & S. W. Ry. Co.*, 1 N. & Mac. 292).
- But its provisions are extended by the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), sect. 16, to steam vessels used by railway companies and the traffic carried by them. And the section (11) which explains and amends this section in the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48) is extended to such vessels and traffic.
- Where the company were directed by statute to maintain a dock, and they allowed it to go out of repair, with a view to divert the traffic to a new dock, it was held that there was no remedy under this section, there being a remedy by mandamus or indictment (*Bennett v. Manchester, Sheffield & Lincolnshire Ry.*, 1 N. & Mac. 288; 6 C. B. N. S. 707. The precise grounds of the decision are not very clear).
- In the same case it was doubted whether a dock, though a mile and a half long, was a "navigation" within the definition of a canal in section 1 (*Bennett v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 1 N. & Mac. 288; 6 C. B. N. S. 707).
- The decision in *Bennett v. Manchester, Sheffield & Lincolnshire Ry. Co.*, is corrected by the Regulation of Railways Act, 1873, section 17 (see per Lush, J., in *S. E. Ry. Co. v. R. Commrs.*, 5 Q. B. D. pp. 248, 249).
- 1. Preference between company and carriers.** A company is not entitled to charge a higher rate for a packed parcel sent by a carrier than for a packed parcel sent by a person who is not a carrier (*Gt. W. Ry. Co. v. Sutton*, L. R. 4 H. L. 226).

No distinction can be made between a packed parcel containing packages belonging to or addressed to different persons and a packed parcel containing packages belonging to or addressed to one person (*Crouch v. Gt. W. Ry. Co.*, 25 L. J. Ex. 137; 11 Ex. 742; *Garton v. Bristol & Exeter Ry. Co.*, 30 L. J. Q. B. 273; 1 B. & S. 112; *Bazendale v. L. & S. W. Ry. Co.*, L. R. 1 Ex. 137).

The company cannot charge a carrier for work, which the company does not in fact perform for the carrier.

Thus, if the same charge is made to a carrier, who receives and delivers his goods at the stations, as to persons for whom the company does the carting to and from the station, the carrier is entitled to an abatement in respect of the carting done by him.

It is immaterial that the company make no profit upon the sum charged for carting to and from the station (*In re Bazendale & Gt. W. Ry. Co.*, 28 L. J. C. P. 81; 5 C. B. N. S. 336; *In re Garton & Gt. W. Ry. Co.*, 28 L. J. C. P. 158; 5 C. B. N. S. 669; *Garton v. Bristol & Exeter Ry. Co.*, 30 L. J. Q. B. 273; 1 B. & S. 112; *Bazendale v. Gt. W. Ry. Co.*, 33 L. J. C. P. 197; 16 C. B. N. S. 137).

But if the company carry between the termini of their line from A. to B. at an equal rate for all, and also carry at a through rate from A. to B., and thence to C., a carrier is not entitled to deduct the cost of carriage from B. to C. from the through rate, and to claim to have his goods carried between A. and B. for the difference (*Bazendale v. L. & S. W. Ry. Co.*, L. R. 1 Ex. 137).

Where one entire charge is made for conveyance not exceeding the maximum mileage rate, but the company also perform without further charge station services for persons who require them, a person not requiring station services is not entitled to attribute part of the charges made to station services, and require a rebate (*Howard v. Midland Ry. Co.*, 3 N. & Mac. 253).

The company carried stamped and unstamped parcels. Their agent, in consideration of collecting the stamped parcels for nothing, received one penny on every unstamped parcel. It was held that a carrier who received the penny on unstamped parcels could not also claim an allowance in respect of stamped parcels (*Robertson v. Midland Gt. W. Ry. Co.*, Ireland, 2 N. & Mac. 409).

For the proper procedure to ascertain how much of the charges made is to be attributed to carriage on the railway, and how much to other expenses, see *Goddard v. L. & S. W. Ry. Co.*, 1 N. & Mac. 308.

The railway commissioners have decided that the company cannot fix the weight of packages of fish to be carried at the lowest rate of charge at 18 pounds, where the result was that a fish merchant whose packages were 21 pounds in weight, and could not be altered without damage to his business, had to pay the higher rate fixed for packages between 18 and 28 pounds. The company were directed to fix 21 pounds as the limit for the lowest rate, as they could not show that packages of 21 pounds would cause more labour or expense to the company than packages of 18 pounds (*Woodger v. Gt. E. Ry. Co.*, 2 N. & Mac. 102).

The company must not shut their stations at an earlier hour to the vans of independent carriers than to their own agents, unless, perhaps, it could be shown that it was necessary to do so for the public convenience (*Garton v. Bristol & Exeter Ry. Co.*, 6 C. B. N. S. 639; 1 Nev. & M. 218; *In re Palmer & L. B. & S. C. Ry. Co.*, L. R. 6 C. P. 194. In *In re Palmer & L. & S. W. Ry. Co.*, L. R. 1 C. P. 688, the Court was equally divided, and the rule dropped).

The company cannot require independent carriers to sign special conditions which they do not require their own agents to sign (*Bazendale v. B. & E. Ry. Co.*, 11 C. B. N. S. 787; 1 N. & Mac. 229).

Upon the question whether the company are bound to act upon a general order by consignees to deliver goods to an independent carrier, or whether they may deliver them by their own agents according to their addresses notwithstanding a general order, the cases are conflicting.

The weight of authority in England is to the effect that the general order must be obeyed by the company (*In re Parkinson & Gt. W. Ry. Co.*, L. R. 6 C. P. 554; *Fishbourne v. Gt. S. & W. Ry. Co.*, Ireland, 2 N. & Mac. 224, R. C., where the goods were addressed to the consignees to the care of independent carriers).

In Scotland, however, it is held that a mere refusal by the company to deliver goods to a carrier upon a general order from the consignees is not a contravention of this section, the company being entitled to deliver the goods according to the addresses either by themselves or their agents (*Wannan v. Scottish Central Ry. Co.*, 1 N. & Mac. 237; *Pickford & Co. v. Caledonian Ry. Co.*, 1 N. & Mac. 252).

Where the company employed certain carriers as their servants or agents for performing part of the contract of carriage into which the company had entered, namely, the cartage from the stations, it was held that facilities given to the carriers by dividing the goods to be delivered by them into districts, and by allow-

17 & 18 Vict.
c. 31, s. 2.

Packed
parcels.

Rebate for
services not
performed.

Undue
facilities.

Special con-
ditions.

General order
to deliver to
carrier.

- 17 & 18 Vict. c. 31, s. 2.** ing them to have boxes in the station for keeping accounts, were not an undue preference (*Pickford & Co. v. Caledonian Ry. Co.*, 1 N. & Mac. 252. See, however, *Cooper v. L. & S. W. Ry. Co.*, 1 N. & Mac. 185; 4 C. B. N. S. 738).
- 2. Preference as between independent merchants.** Where a direct advantage is given to one merchant over another, there is, of course, an undue preference (*In re Ransome & E. Counties Ry. Co.*, 26 L. J. C. P. 91; 1 C. B. N. S. 437).
It would seem that a facility in the coal traffic of a corporation not trading in coal, but using the coal for the manufacture and supply of gas, is not an undue preference over a coal merchant (*Lees v. Lancashire & Yorkshire Ry. Co.*, 1 N. & Mac. 352).
- Competitive articles.** It is not necessary that two substances should be identical for the purposes of equality of charge. It is sufficient if they are substantially of the same description, and used in competition with each other for the same purpose (*Nitshill & Leamahagov Coal Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 39).
- Coal districts.** Where the company adjust certain districts within which they carry goods above a certain quantity at a reduced rate, the division into districts, if fairly made, cannot be complained of, though the effect of it may be that the places with which a particular coal merchant deals are distributed over several districts, and he may be prevented from sending sufficient coals into each district to avail himself of the reduced rate (*Ransome v. E. Counties Ry. Co.*, 1 N. & Mac. 109; 4 C. B. N. S. 135; 27 L. J. C. P. 166; *Lloyd v. Northampton, &c. Ry. Co.*, 3 N. & Mac. 259. See 1 N. & Mac. 155; 8 C. B. N. S. 709; and see *Denaby Colliery Co. v. Manch., Sheff. & Linc. Ry. Co.*, 11 App. C. 97).
So, in a similar case, it is not a ground of complaint that the same rate is charged for carriage from two places within the same district for unequal distance (*Lloyd v. Northampton & Banbury Junction Ry. Co.*, 3 N. & Mac. 269).
A desire to introduce the coke of a particular district is no justification of a preference given to the coke merchants of that district (*In re Oxlade & N. E. Ry. Co.*, 26 L. J. C. P. 129; 1 C. B. N. S. 454).
A company ought not to favour the traffic of one locality more than that of another if there is a competition of interests, and the circumstances are alike (*Richardson v. Mid. Ry. Co.*, 4 B. & Mac. 1; *Ayr Harbour Trustees v. Glasgow & S. W. Ry. Co.*, 4 B. & Mac. 90).
- Reduced rate justified by large quantities.** The company may carry at a lower rate for a particular person, who agrees to send large quantities of goods, or to send them in a manner which lessens the cost of their conveyance to the company, provided they are willing to carry at the same rate for any person who can offer the same advantages (*Re Nicholson & Gt. W. Ry. Co.*, 5 C. B. N. S. 366; 28 L. J. C. P. 89; *Strick v. Swansea Canal Co.*, 16 C. B. N. S. 245; 33 L. J. C. P. 240; *Greenop v. S. E. Ry. Co.*, 2 N. & Mac. 319; *Broughton Co. v. G. W. Ry. Co.*, 4 B. & Mac. 191; *Girardot & Co. v. Mid. Ry. Co.*, 4 B. & Mac. 291).
An agreement by which quarry owners bind themselves to send all their slate by the company for a certain number of years or for a longer number of years than other quarry owners, is not such a consideration as to justify a lower rate of charge (*Diphrys Casson Slate Co. v. Festiniog Ry. Co.*, 2 N. & Mac. 73; *Holland v. Festiniog Ry. Co.*, 2 N. & Mac. 278).
- Natural advantages.** If a person enjoy certain natural advantages of position or the like which facilitate the carriage of his goods by the company, the company may make him an allowance in respect of the trouble saved (*Re Harris & Cockermouth & Workington Ry. Co.*, 3 C. B. N. S. 693; 27 L. J. C. P. 162).
And in the same way the company are entitled to make a higher charge for carriage over steep gradients or up inclines (*Nitshill & Leamahagov Coal Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 39; *Belladyke Coal Co. v. N. British Ry. Co.*, 2 N. & Mac. 105).
But a facility afforded to a person with a view to induce him to send his goods by the line of the company instead of sending them by another line which, in the absence of such facility, he would employ, is an undue preference as against a person to whom the facility is refused, though the arrangement may be profitable to the company, and no undue preference is intended (*Harris v. Cockermouth & Workington Ry. Co.*, 1 N. & Mac. 97; 3 C. B. N. S. 693; 27 L. J. C. P. 162; *Evershed v. L. & N. W. Ry. Co.*, 3 App. C. 1029).
Thus gratuitous carting for certain firms whose works are so situated in reference to the line of another and competing railway company as to make carting in the case of goods sent by that line unnecessary, is an undue preference as against other firms whose works are not so situate (*L. & N. W. Ry. Co. v. Evershed*, 3 Q. B. D. 135; 3 App. C. 1029).
Upon the authority of *Evershed's Case*, it has been decided that the company are not justified in carrying the goods of persons within a certain district who have

access to sea traffic at a lower price than the goods of a person not within the district (*Budd v. L. & N. W. Ry. Co.*, 36 L. T. N. S. 802; 25 W. R. 752; 4 B. & Mac. 393. See *Foreman v. G. E. Ry. Co.*, 2 N. & Mac. 202).

17 & 18 Vict.
c. 31, s. 3.

An agreement by a person to send goods by certain lines of the company will not justify a decreased charge for carriage of the goods of that person over other lines of the company (*In re Buxendale & Gt. W. Ry. Co.*, 28 L. J. C. P. 69; 5 C. B. N. S. 309; *Bellsdyke Coal Co. v. N. British Ry. Co.*, 2 N. & M. 105).

A railway company may enter into arrangements with a steamboat company running in connection with the line of the railway company, for the carriage of passengers with through tickets, to the exclusion of another steamboat company which does not offer the same advantages as the first company (*Southsea & Isle of Wight Steam Ferry Co. v. L. & S. W. Ry. Co.*, & *L. B. & S. C. Ry. Co.*, 2 N. & Mac. 341).

There is no right of action by a common carrier against the company on the ground that he is excluded from the station; the remedy, if any, is under this section (*Barker v. Midland Ry. Co.*, 18 C. B. 46).

Exclusion
from station.

A company may give a cab-owner the exclusive right of plying for hire at their stations where the arrangement is for the benefit of the public (*In re Beadell & E. Counties Ry. Co.*, 26 L. J. C. P. 250; 2 C. B. N. S. 509; *Painter v. London & Brighton Ry. Co.*, 2 C. B. N. S. 702; 1 N. & Mac. 58; *Ilfracombe Public Conveyance Co. v. L. & S. W. Ry. Co.*, 1 N. & Mac. 61).

On the other hand, the company will not be allowed to admit the omnibus of a proprietor plying to a given town to the exclusion of an omnibus plying to that town and other places as well, the monopoly being inconvenient to the public (*In re Marriott & L. & S. W. Ry. Co.*, 26 L. J. C. P. 154; 1 C. B. N. S. 499).

Hitherto applications against railway companies relating to the charges made for passenger tickets appear always to have failed.

Passenger
traffic.

Thus it has been held that the company may charge fares proportionally lower for long distances than those charged for short distances (*A.-G. v. Birmingham & Derby Junction Ry. Co.*, 2 R. C. 124; *Hozier v. Caledonian Ry. Co.*, 1 N. & Mac. 27).

It is not a ground for interference under this section that higher rates for passengers are charged on one branch than on another, or that the company issue third class return tickets on one branch and not on another (*Caterham Ry. Co. v. Brighton & S. E. Ry. Co.*, 1 N. & Mac. 32; 1 C. B. N. S. 410; 26 L. J. C. P. 16).

Nor can an individual complain because return tickets from A. to B. are issued at a cheaper rate than return tickets from A. to C. (*Jones v. E. Counties Ry. Co.*, 1 N. & Mac. 45; 3 C. B. N. S. 718).

The mere fact that fares on part of a line are higher than those on another is no ground for complaint if there is no undue preference (*Innes v. L. B. & S. C. Ry. Co.*, & *L. & S. W. Ry. Co.*, 2 N. & Mac. 155).

If, however, an undue preference were given to one town over another, it would seem that the railway commissioners would interfere (see *Corporation of Dover v. S. E. Ry. Co. & L. C. & D. Ry. Co.*, 1 N. & Mac. 349).

The question of through routes will be found treated under the Regulation of Railways Act, 1873. The following points may be noticed here:—

III. Continu-
ous lines.

There is no power under this section to make an order on two railway companies to act jointly in doing what neither company has power to do separately (*Toomer v. L. C. & D. Ry. Co. & S. E. Ry. Co.*, 3 N. & Mac. 79; 2 Ex. D. 450).

The obligation upon a company to afford facilities for forwarding traffic coming by a line which forms a continuous line of communication with it, is not limited to cases where the company has accommodation to take over the traffic at the point of junction (*Victoria Coal & Iron Co. v. Neath & Brecon & Midland Ry. Cos.*, 3 N. & Mac. 37).

Where two companies had stations a mile apart, but connected by a line used for goods only, the companies were ordered to provide continuous communication for passengers as well (*Uckfield Local Bd. v. L. B. & S. C. Ry. Co. & S. E. Ry. Co.*, 2 N. & Mac. 214; see *James v. Taff Vale Ry. Co.*, 3 Nev. & Mac. 540).

It seems a company cannot be ordered to put its line into such a condition as to enable another company to exercise its running powers over the first company's line (*Swindon, &c. Ry. Co. v. G. W. Ry. Co.*, 4 B. & Mac. 173).

As to what is a continuous line of railway, see *Hamman v. G. W. Ry. Co.*, 4 B. & Mac. 181.

3. It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this Act, to Parties com-
plaining that
reasonable
facilities for

17 & 18 Vict.
c. 31, s. 3.

forwarding
traffic, &c. are
withheld, may
apply by
motion or
summons to
the Superior
Courts.
[By Regula-
tion of Rail-
ways Act,
1873, 36 & 37
Vict. c. 48,
s. 6, jurisdic-
tion trans-
ferred to rail-
way commis-
sioners.]

apply in a summary way, by motion or summons, in England, to her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of her Majesty's Superior Courts in Dublin, or in Scotland to the Court of Session in Scotland, as the case may be, or to any judge of any such Court; and, upon the certificate to her Majesty's Attorney General in England or Ireland, or her Majesty's Lord Advocate in Scotland, of the Board of Trade alleging any such violation or contravention of this Act by any such companies or company, it shall also be lawful for the said attorney general or lord advocate to apply in like manner to any such Court or judge, and in either of such cases it shall be lawful for such Court or judge to hear and determine the matter of such complaint; and for that purpose, if such Court or judge shall think fit, to direct and prosecute, in such mode and by such engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such Court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such Court or judge on such hearing, or on the report of any such person, that anything has been done or omission made, in violation or contravention of this Act, by such company or companies, it shall be lawful for such Court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this Act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict it shall be lawful for such Court or judge to order that a writ or writs of attachment, or any other process of such Court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such Court or judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such Court or judge shall determine, not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such monies shall be payable as the Court or judge may direct, either to the party complaining, or into Court to abide the ultimate decision of the Court, or to her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the name of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any superior Court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such Court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such Court or judge may think fit; and it shall be lawful for any such engineer, barrister, or other person, if directed

so to do by such Court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath. 17 & 18 Vict.
c. 31, ss. 4—7.

4. It shall be lawful for the said Court of Common Pleas at Westminster, or any three of the judges thereof, of whom the Chief Justice shall be one, and it shall be lawful for the said Courts in Dublin, or any nine of the judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justice of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be five, from time to time to make all such general rules and orders as to the forms of proceedings and process, and all other matters and things touching the practice and otherwise in carrying this Act into execution before such Courts and judges, as they may think fit, in England or Ireland, and in Scotland it shall be lawful for the Court of Session to make such acts of sederunt for the like purpose as they shall think fit.

Judges may make such regulations as may be necessary for proceedings under this Act.
[See marginal note to s. 3, ante.]

5. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the Court or judge by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such Court or judge, and upon such rehearing to rescind or vary such order.

Court or judge may order a rehearing.

6. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

Mode of proceeding under this Act.

7. Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals (*a*), or to any articles, goods (*b*), or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants (*c*), notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the Court or judge before whom any question relating thereto shall be tried to be just and reasonable (*d*): Provided (*e*) always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering

Company to be liable for neglect or default in the carriage of goods notwithstanding notice to the contrary.

17 & 18 Vict.
c. 31, s. 7.

Company not to be liable beyond a limited amount in certain cases, unless the value declared and extra payment made.

Proof of value to be on the person claiming compensation.

No special contract to be binding unless signed.

Saving of Carriers Act, 11 G. 4 & 1 W. 4, c. 68.

the same to such company shall, at the time of such delivery, have declared (*f*) them to be respectively of higher value than as above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable per-centage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such per-centage or increased rate of charge shall be notified in the manner prescribed in the statute eleventh George Fourth and first William Fourth, chapter sixty-eight, and shall be binding upon such company in the manner therein mentioned: Provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall (*g*) be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: Provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said Act of the eleventh George Fourth and first William Fourth, chapter sixty-eight, with respect to articles of the descriptions mentioned in the said Act.

Bailees.

The section does not apply to goods received by the company as warehousemen (*Van Toll v. S. E. Ry. Co.*, 31 L. J. C. P. 241).

Carriage beyond line.

It applies only to companies carrying on their own lines; a passenger is therefore bound by a condition that the company having issued a through ticket will not be responsible for a loss occurring beyond its own line (*Zuns v. S. E. Ry. Co.*, L. R. 4 Q. B. 539. See *Aldridge v. Gt. W. Ry. Co.*, 15 C. B. N. S. 582; 33 L. J. C. P. 161).

Under a condition that the company will not be liable for loss or injury arising "off its lines," the company will be liable for luggage delivered to them, unless they show that they have delivered it to another company (*Kent v. Midland Ry. Co.*, L. R. 10 Q. B. 1).

Neglect or default of the company.

The section applies only to injury "occasioned by the neglect or default" of the company or its servants, and companies may protect themselves against the common law liability of carriers for accidental injuries by conditions, without regard to the question whether such conditions are reasonable or not (*Peck v. N. Staffordshire Ry. Co.*, 10 H. L. 473, p. 510; *Harrison v. L. B. & S. C. Ry. Co.*, 29 L. J. Q. B. 209; 31 L. J. Q. B. 113; 2 B. & S. 122, 152; *Beal v. S. Devon Ry. Co.*, 29 L. J. Ex. 441; 3 H. & C. 337).

Condition exonerating company from liability except for gross negligence. Condition exonerating company from liability as insurer.

The latter case also shows that a condition exempting the company from liability except for gross negligence exonerates them only from their liability as insurers, and not from liability for want of reasonable care, skill, and expedition.

A further point might arise whether, supposing no question as to the reasonableness of a contract exempting the company from liability for accidental injuries can be raised under this section, the subsequent proviso requiring a special contract to be signed by the owner of the goods would apply to such a contract. The better opinion appears to be that the proviso only applies to contracts contemplated by the earlier part of the section, namely, contracts exonerating the company from liability for negligence. (See, however, per Hawkins, J., in *Ashendon v. L. B. & S. C. Ry. Co.*, 5 Ex. D. 190, p. 194.)

By the Railways Clauses Act, 1863, s. 31, this section is extended to the whole traffic carried on by steamboats (*Doolan v. Midland Ry. Co.*, 2 App. C. 792).

Traffic in steamboats.

The Railways Regulation Act, 1868, s. 16, extends this section to traffic on board steamers belonging to or used by railway companies authorised to have or use them (*Cohen v. S. E. Ry. Co.*, 2 Ex. D. 253).

The Railways Regulation Act, 1871, s. 12, extends the provisions of the Railways Regulation Act, 1868, s. 16, to a company under a contract to procure the carriage of goods by sea in vessels not belonging to the company (*Doolan v. Midland Ry. Co.*, 2 App. C. 792).

17 & 18 Vict.
c. 31, s. 7.

But whether the company carries in its own vessels or in the vessels of agents, the total liability is restricted to an amount measured by the tonnage of the ship, according to the provisions of the Merchant Shipping Act (*L. & S. W. Ry. Co. v. James*, 8 Ch. 241. See *Doolan v. Midland Ry. Co.*, 2 App. C. 792, 809).

Merchant
Shipping Act.

Under this section, special conditions exonerating the company from liability for negligence, though just and reasonable, are not binding upon the owner of the goods unless signed by him; and, on the other hand, special conditions, though signed by the owner of the goods, are not binding if they are not just and reasonable (*Peek v. North Staffordshire Ry. Co.*, 10 H. L. 473).

Conditions
must be
reasonable
and signed.

(a) The words "horses, cattle, or other animal" are not cut down by the subsequent proviso, therefore a dog is within the section (*Harrison v. London & Brighton Ry. Co.*, 2 B. & S. 122, 149; *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176).

Dog.

(b) Passengers' luggage is within this section, whether carried with the passenger or placed in the van (*Cohen v. S. E. Ry. Co.*, 2 Ex. D. 253; *Bunch v. G. W. Ry. Co.*, 17 Q. B. D. 215, overruling *Stewart v. L. & N. W. Ry. Co.*, 3 H. & C. 135. See *Cutler v. N. London Ry. Co.*, 19 Q. B. D. 64).

Passengers'
luggage.

Where there is a provision that the company shall carry the luggage of passengers free of charge, a condition imposing a payment for luggage upon passengers who travel by a cheaper ticket than the ordinary ticket, is valid (*Rumney v. N. E. Ry. Co.*, 32 L. J. C. P. 244; 14 C. B. N. S. 641).

Charge for
luggage.

(c) The term "servants" includes agents whom the company employ to do what they have contracted to do (*Doolan v. Midland Ry. Co.*, 2 App. C. 726).

Servants.

(d) Where a *bond fide* option is offered by the company to carry at a reasonable price with the ordinary carrier's liability, or to carry at a cheaper rate on special terms, it would seem that the special terms could not be considered unreasonable (see *Simons v. Gt. W. Ry. Co.*, 18 C. B. 805; *Gallagher v. Gt. W. Ry. Co.*, 1 R. 8 C. L. 326; *Lewis v. Gt. W. Ry. Co.*, 3 Q. B. D. 195; *McNally v. Lanc. & York. Ry. Co.*, 8 L. R. Ir. 81).

Option given.

At any rate, in such a case the company may by a contract at the lower rate exempt themselves from liability for loss, damage, or delay, unless caused by wilful misconduct (*Glenister v. Gt. W. Ry. Co.*, 29 L. T. N. S. 423; 22 W. R. 72; *Harris v. Midland Ry. Co.*, 25 W. R. 63; *Lewis v. Gt. W. Ry. Co.*, 3 Q. B. D. 195; *Gt. W. Ry. Co. v. McCarthy*, 12 App. C. 218).

Wilful mis-
conduct.

And it seems the company might, by a proper contract, protect themselves against the consequences of wilful misconduct on the part of their servants (*Lewis v. Gt. W. Ry. Co.*, 3 Q. B. D. 195, p. 205; see *Manchester, Sheffield & Linc. Ry. Co. v. Brown*, 8 App. C. 703; *Ronan v. Mid. Ry. Co.*, 14 L. R. Ir. 157).

The higher rate need not be notified in the manner in which tolls are to be notified under section 93 of the Railways Clauses Act, 1846 (*Gt. W. Ry. Co. v. McCarthy*, 12 App. C. 218).

The offer to carry at a higher rate with the ordinary common law liability may be qualified by conditions provided such conditions are not unreasonable (*McNally v. Lanc. & York. Ry. Co.*, 8 L. R. Ir. 81; *Moore v. G. N. Ry. Co.*, 10 L. R. Ir. 96; *G. W. Ry. Co. v. McCarthy*, 12 App. C. 218).

Whether
carriage at
higher rate
may be sub-
ject to con-
ditions.

Thus, a condition that the company will not be liable for injuries caused by fear or restiveness of animals, and a limit of liability as regards amount, the amounts being those specified in the section, and a provision that the company do not admit liability in the case of animals able to walk from the truck, have been held not to invalidate the alternative offer (*Moore v. G. N. Ry. Co.*, 10 L. R. Ir. 96; *G. W. Ry. Co. v. McCarthy*, 12 App. C. 218).

It lies upon the company to show that the contract is reasonable; and if it is to be upheld as reasonable because a reasonable alternative offer was made, the company must prove this (*Ruddy v. Mid. G. W. Ry. Co.*, 8 L. R. Ir. 224).

Onus of proof
that contract
reasonable.

Where the higher rate is within the parliamentary limit, it will be assumed to be reasonable unless shown to be prohibitory or excessive. The fact that traders invariably adopt the lower rate is no evidence that the higher is unreasonable (*Foreman v. Gt. W. Ry. Co.*, 38 L. T. N. S. 851; *Gallagher v. Gt. W. Ry. Co.*, 1 R. 8 C. L. 326; see *Manchester, Sheffield & Linc. Ry. Co. v. Brown*, 8 App. C. 703; *McCarthy v. Gt. W. Ry. Co.*, 12 App. C. 218).

What is a fair
option.

Where the special contract offers an option to carry at the company's risk at a higher rate, which is within the parliamentary limit and is posted up in the office, there is evidence that the option was offered (*Foreman v. Gt. W. Ry. Co.*, 38 L. T. N. S. 851).

Where the higher charge is not in terms authorised by statute, though there is nothing prohibiting it, it lies upon the company to show that it is reasonable (*Harrison v. London & Brighton Ry. Co.*, 2 B. & S. 122; 31 L. J. Q. B. 122).

17 & 18 Vict.
c. 31, s. 7.

If the company offer to undertake the ordinary carrier's liability at a price they are not entitled to charge, or to carry at a lower price free from liability, the alternative offered is not reasonable (*Peck v. N. Staffordshire Ry. Co.*, 10 H. L. 473; 32 L. J. Q. B. 241).

Similarly if the offer to carry at the higher rate is made subject to a condition which is unreasonable, no fair option can be said to be given (*Lloyd v. Waterford & Limerick Ry. Co.*, 15 Ir. C. L. 37).

No option.

Where no fair option is given, it is clear that conditions exempting the company from liability for neglect or default are unreasonable and void (*M'Manus v. Lancashire & Yorkshire Ry. Co.*, 4 H. & N. 327; *Allday v. Gt. W. Ry. Co.*, 5 B. & S. 903; *Peck v. N. Staffordshire Ry. Co.*, 10 H. L. 473; *Gregory v. West Midland Ry. Co.*, 2 H. & C. 914; 33 L. J. Ex. 155; *Doolan v. Midland Ry. Co.*, 2 App. C. 792; overruling so far as contra, *Wiss v. Gt. W. Ry. Co.*, 1 H. & N. 63; *Pardington v. S. W. Ry. Co.*, 1 H. & N. 392).

Offer of free pass.

A condition exonerating the company from liability for negligence in carrying cattle is invalid, though there may be a subsequent condition offering a free pass to induce the owner to send a drover in charge, and the free pass is accepted (*Rooth v. N. E. Ry. Co.*, L. R. 2 Ex. 173).

Damage to be shown at time of unloading.

A condition that the company will not be liable for damage to cattle unless the damage is pointed out at the time of unloading is unreasonable where there is no option (*Lloyd v. Waterford & Limerick Ry. Co.*, 15 Ir. C. L. 37).

A condition that the company will not be liable for loss or damage to any horse above the value of 40l., or any dog above the value of 5l., unless a declaration of value is signed by the owner, and requiring a percentage of 6d. in the pound to be paid upon the declared value over 40l. or 5l. was held reasonable in *Harrison v. London & Brighton Ry. Co.*, 2 B. & S. 122; 31 L. J. Q. B. 113; but that case has been overruled by *Ashendon v. L. B. & S. C. Ry. Co.*, 5 Ex. D. 190).

Loss from overcrowding.

A condition that the company will not be responsible for loss of animals from overcrowding is unreasonable (*Corrigan v. G. N., &c. Ry. Cos.*, 6 L. R. Ir. 91).

A condition that the company will not be accountable for the correct selection of the owner's cattle is unreasonable (*M'Nally v. Lanc. & York. Ry. Co.*, 8 L. R. Ir. 81).

Conditions held reasonable though no option.

On the other hand, the following conditions have been held reasonable, though there was no option:—

Loss of market.

A condition exonerating the company from the consequences of loss of market (*Beal v. S. Devon Ry. Co.*, 29 L. J. Ex. 441; 5 H. & N. 875; 3 H. & C. 337; 12 W. R. 1115; *Lord v. Midland Ry. Co.*, L. R. 2 C. P. 339. See *White v. Gt. W. Ry. Co.*, 26 L. J. C. P. 168).

Claim for damages within seven days.

A condition requiring claims for loss to be made within seven days after the goods are delivered (*Lewis v. Gt. W. Ry. Co.*, 5 H. & N. 867. See *Simons v. Gt. W. Ry. Co.*, 18 C. B. 805).

Probably such a condition relates only to inanimate goods. Moreover, as it relates to something after delivery, it may be a question whether it is within the section which relates to conditions with respect to the receiving, forwarding and delivering (*Moore v. G. N. Ry. Co.*, 10 L. R. Ir. 95).

Risk of loading and unloading.

Possibly a condition throwing upon the owner the risk of loading and unloading might be considered reasonable (see *Rooth v. N. E. Ry. Co.*, L. R. 2 Ex. 173, p. 179).

There seems to be no reason to doubt that conditions may be good in part and bad in part, notwithstanding the dicta in *Kirby v. Gt. W. Ry. Co.*, 18 L. T. N. S. 658 (see *Simons v. Gt. W. Ry. Co.*, 18 C. B. 805; 25 L. J. C. P. 25; *M'Cance v. L. & N. W. Ry. Co.*, 31 L. J. Ex. 65, 70; 7 H. & N. 477).

Receiving and delivering.

(e) The proviso applies not only to the risks of carriage and conveyance, but also to those attending the receiving and delivery.

Therefore the owner of a horse injured through the negligence of the company while in course of delivery to the company for carriage, and before booking, can only recover 50l. if no declaration of value has been made (*Hodgman v. West Midland Ry. Co.*, 33 L. J. Q. B. 233; 35 ib. 85; 5 B. & S. 173; and see *Hill v. L. & N. W. Ry. Co.*, W. N., 8 May, 1880, p. 84).

Declaration of value.

(f) The declaration of value under this section must be such as to convey a distinct intimation that the sender intends to hold the company responsible for the higher sum. If there is no such declaration, the company cannot demand insurance money beyond the usual charge, on the ground that a servant of the company has been casually informed what the animal is worth (*Robinson v. L. & S. W. Ry. Co.*, 19 C. B. N. S. 51; 34 L. J. C. P. 234).

It seems a person signing a declaration that his horse is worth only 10l., and agreeing that it shall be carried at his own risk, cannot recover more than the 10l. if the horse is damaged (*M'Cance v. L. & N. W. Ry. Co.*, 7 H. & N. 477; 3 H. & C. 343).

Signature by servant.

(g) A person who can read and sends a servant who cannot read to sign the contract note, is in the same position as if he had signed the note himself (*Kirby*

- v. *Gt. W. Ry. Co.*, 18 L. T. N. S. 658; *Foreman v. Gt. W. Ry. Co.*, 38 L. T. N. S. 851). 17 & 18 Vict. c. 31, s. 8.
- The signature of a railway agent employed by the consignor to deliver, and by the company to receive goods, is sufficient to bind the sender (*Aldridge v. Gt. W. Ry. Co.*, 15 C. B. N. S. 582).
- The contract, if not signed by the owner, is void only as against him; it is binding upon the company (*Baxendale v. Gt. E. Ry. Co.*, L. R. 4 Q. B. 244; 35 L. J. Q. B. 137).
- A contract exonerating a carrier from certain losses to which he would be liable as an insurer will not *prima facie* exonerate him from liability for those losses, if they arise from his own negligence.
- Thus a condition that the company accept no responsibility will not excuse them from the consequences of their own negligence (*Martin v. Gt. Indian Peninsular Ry. Co.*, L. R. 3 Ex. 9).
- A condition exonerating the company from liability for damage occasioned by kicking, plunging, or restiveness, does not exonerate the company if the restiveness is caused by their negligence (*Gill v. Manchester Ry. Co.*, L. R. 8 Q. B. 186; *Moore v. G. N. Ry. Co.*, 10 L. R. Ir. 95).
- A condition exempting the company "from all liability for loss or damage by delay in transit, or from whatever other cause arising," relieves the company from liability for the negligence of their own servants (*Manchester, Sheffield & Linc. Ry. Co. v. Brown*, 8 App. C. 703).
- A condition that the company shall not be liable in respect of any detention does not relieve the company from liability where animals were detained in the erroneous belief that the carriage had not been paid (*Gordon v. G. W. Ry. Co.*, 8 Q. B. D. 44).
- Where the owner undertakes all risks of conveyance whatever, the company are not liable for damage to cattle caused because the trucks are unfit and unsafe (*Chippendale v. Lancashire & Yorkshire Ry. Co.*, 21 L. J. Q. B. 22).
- And such a condition will exempt the company from liability for gross negligence (*Carr v. Lancashire and Yorkshire Ry. Co.*, 7 Ex. 707).
- A contract to carry goods "at the owner's risk" exempts the company from the ordinary risks incurred by goods going along the railway, but not from liability for negligence, such as delay in delivery (*Robinson v. Gt. W. Ry. Co.*, 35 L. J. C. P. 123; *H. & R.* 97; *D'Arc v. L. & N. W. Ry. Co.*, L. R. 9 Q. B. 325; *Goldsmith v. G. E. Ry. Co.*, 44 L. T. 181; 29 W. R. 651).
- On the other hand, if the owner has notice that the company carry at a lower rate "where the sender relieves them from all liability of loss, damage, or delay," unless caused by wilful misconduct, a contract to carry at the lower rate at the owner's risk must be interpreted by the sender's knowledge of its meaning, and will exonerate the company from liability for negligence (*Lewis v. Gt. W. Ry. Co.*, 3 Q. B. D. 195).
- Wilful misconduct exists where a person does an act from which he knows that mischief will result, or an act likely to be mischievous, but with an indifference to his duty to ascertain whether it was mischievous or not (*Lewis v. Gt. W. Ry. Co.*, 3 Q. B. D. 195, p. 206).
- Exception of accidents from any fault, negligence, or mistake of the servants of the company does not except wilful misconduct (*Ronan v. Midl. Ry. Co.*, 14 L. R. Ir. 157).
- Mere misdelivery does not amount to wilful misconduct (*Stevens v. G. W. Ry. Co.*, 52 L. T. 324).
- But where goods have been refused by the consignee, and are delivered without further inquiry to a person having a name resembling that of the consignee, there is wilful misconduct (*Hoare v. Gt. W. Ry. Co.*, 25 W. R. 631; 37 L. T. 186).
- Negligence in loading or unloading goods, for instance, loading a truck or a van so that it is too high to pass under the bridges of a second company, or placing horse rakes on trucks shorter than the rakes, without covering, does not in itself constitute wilful misconduct (*Webb v. Gt. W. Ry. Co.*, 26 W. R. 111; *Haynes v. Gt. W. Ry. Co.*, 41 L. T. N. S. 436. See, too, *Gt. W. Ry. Co. v. Glenister*, 22 W. R. 72; *Jarman v. Gt. W. Ry. Co.*, 22 W. R. 73, note).
- Railway agent may sign.
Contract not signed.
Construction of particular contracts.
"The company accept no responsibility."
Restiveness.
Negligence.
Detention.
"Owner undertakes all risks."
Goods "at owner's risk."
Course of dealing.
Wilful misconduct.

8. This Act may be cited for all purposes as "The Railway and Canal Traffic Act, 1854." Short title.

COURT OF CHANCERY OF LANCASTER ACT, 1854.

17 & 18 VICT. c. 82.

17 & 18 Vict.
c. 82, s. 13. *An Act further to improve the Administration of Justice
in the Court of Chancery of the County Palatine of
Lancaster.* [7th August, 1854.]

Monies pay-
able under
13 & 14 Vict.
c. 43, s. 12,
into the Bank
of England
may be paid
into branch
bank within
the county
palatine.

13. AND whereas by the twelfth section of the said Act of the thirteenth and fourteenth years of the Queen, chapter forty-three, it was enacted that all monies payable in respect of lands situate within the county palatine, and which are authorised to be paid into or deposited in the Bank of England to the account of the Accountant General of the High Court of Chancery, under and by virtue of the Lands Clauses Consolidation Act, 1845, or any local or special Act passed or to be passed incorporating the provisions of the said last-mentioned Act, or otherwise authorising the taking or using of lands situate in the said county palatine, and also that all monies and securities held by any party who might be sued in the Court of Chancery of the said county palatine in respect thereof, and which, under and by virtue of an Act made and passed in the parliament held in the tenth and eleventh years of the reign of her present majesty, intituled "An Act for better securing trust funds, and for the relief of trustees," might be in like manner paid or transferred into or deposited in the Bank of England to the account of the said Accountant General, might, from and after the passing of the said Act now in recital, be in like manner paid or transferred into or deposited in the Bank of England, to the joint account of the clerk of the council of the duchy of Lancaster and of the registrar and comptroller of the said county palatine Court, in the matter in respect whereof such payment, transfer, or deposit should be made, and that the receipt of one of the cashiers of the said bank should be a full discharge to the person paying or transferring or depositing the same, and that such monies and securities, and all costs of application in respect thereof should be dealt with by the said Court of Chancery of the county palatine in the same manner as the same might be dealt with by the High Court of Chancery, or by the Lord High Chancellor or any of the judges of the said High Court, if such monies or securities had been paid or transferred into or deposited in the Bank of England to the credit of the Accountant General of that Court, and the lands in respect of

which such payment, transfer, or deposit should be made might be dealt with in the same manner as if it had been made in manner prescribed by the Lands Clauses Consolidation Act: And whereas since the passing of the said recited Act, the said county palatine has been divided into districts, and registrars and comptrollers have been appointed for such districts respectively: Be it enacted, that any monies and securities to be paid or transferred or deposited under the said recited provision may be so paid or transferred into or deposited with some one or other of the branches of the Bank of England within the said county palatine, to the joint account of the clerk of the council of the duchy of Lancaster and the registrar and comptroller of the district within which such branch bank is so situate, and the receipt of the manager, or agent, or cashier of such branch bank shall be a full discharge to the person paying or transferring or depositing the same, and such payment, transfer, or deposit shall have the same force and effect as any payment, transfer, or deposit made under the said recited provision would have had: Provided always, that no monies shall be so paid or deposited under or by virtue of the Lands Clauses Consolidation Act, 1845, or any local or special Act as aforesaid, in case the party who would have been entitled to the rents and profits of the lands in respect of which such monies shall be payable, or his or her guardian or committee in case of infancy or lunacy, shall at any time before such payment or deposit serve or cause to be served a notice in writing at the office of the company taking the lands, requesting them not to make the payment or deposit.

17 & 18 Vict.
c. 82, s. 13.

INCLOSURE OF LAND ACT, 1854.

17 & 18 VICT. c. 97.

17 & 18
Vict. c. 97,
ss. 15—17.

An Act to amend and extend the Acts for the Inclosure, Exchange, and Improvement of Land. [10th August, 1854.]

[Explained by
20 & 21 Vict.
c. 31, and see
45 Vict. c. 15,
post.]

WHEREAS it is expedient that "The Acts for the Inclosure, Exchange, and Improvement of Land" should be amended and further extended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Application of
compensation
for common
rights paid
under 8 & 9
Vict. c. 18.

15. Where any money shall have been or may hereafter be paid to a committee under "The Lands Clauses Consolidation Act, 1845," or under any railway or other special Act by which money may have been directed or authorised to be paid to a committee as compensation for the extinction of commonable or other rights, or for lands, being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and the majority of such committee shall be of opinion that the provisions of such Act for the apportionment thereof cannot be satisfactorily carried into effect, such majority may make application in writing to the commissioners to call a meeting of the persons interested in such compensation money, to determine whether or not such compensation money shall be apportioned under the provisions of this Act.

Money to be
paid into
Bank of
England.

16. If the majority in number and interest shall resolve that such compensation money shall be apportioned, the amount of such compensation money shall be forthwith paid into the Bank of England, to the credit of an account to be named by the Inclosure Commissioners for England and Wales; and the said committee shall be absolutely discharged from all liability in respect of such compensation money, upon payment thereof into the Bank of England as hereinbefore directed.

Interests to be
ascertained
by commis-
sioners.

17. As soon as the said monies shall have been paid into the bank as aforesaid, the said Inclosure Commissioners, or any assistant commissioners appointed or to be appointed by them for that purpose, shall proceed to ascertain, determine, and award the names of the parties who were entitled to such estates, rights, and interests

in the said common and commonable lands, and the amount or value of their respective shares, rights, and interests therein, and the proportionate amount of the price so to be paid as aforesaid for such estates, rights, and interests to which each party so entitled as aforesaid is entitled, in respect of his share, right, or interest as aforesaid; and the award of the commissioners under their common seal, or assistant commissioner in writing under his hand and seal, shall be binding on all parties claiming such estates, rights, and interests, as aforesaid; and for the purpose of ascertaining the rights and interests of such parties as aforesaid it shall be lawful for the said Inclosure Commissioners or assistant commissioner to call such meetings as they or he shall think fit of all persons having or claiming any such rights or interests in the said common and commonable lands as aforesaid, at such time and place as the said commissioners or assistant commissioner shall think fit, so as the same shall be appointed by a public notice thereof in writing to be affixed at least twelve days before such meeting on the principal outer door of the parish church in which such land or any part is situate; and to be inserted in one of the public newspapers published or generally circulated in the county in which such land is situate; and at such meeting the said commissioners or assistant commissioner do and shall proceed to examine into and ascertain all and every the claims which shall be made or put forward in respect of any such rights or interests as aforesaid, and the relative and proportionate value of the estates, rights, and interests of any person or persons claiming to be entitled thereto, and for that purpose do and may employ any valuer or surveyor, and call for and receive such records, deeds, and writings, and such other proof or evidence, as the said commissioners or assistant commissioner may think fit; and they and he are and is hereby authorised and required to take the testimony of any witnesses upon oath (which oath they and he are and is respectively hereby empowered to administer), or to take the affirmation of such witnesses in cases where affirmation is allowed by law instead of oath.

17 & 18
Vict. c. 97,
ss. 18, 19.

18. All the costs and expenses of the said Inclosure Commissioners and assistant commissioner, and of any valuer or surveyor employed by them or him under the provisions hereinbefore contained, shall, in the first place, be paid out of such compensation monies, and the residue of the said monies shall be paid and divided between and amongst the said several parties to be named in the said award, and in the shares and proportions to be ascertained and set forth in such award.

As to the
payment of
costs of in-
closure com-
missioners,
and as to the
residue of
monies.

19. When it shall appear to the commissioners or assistant commissioner that any of the parties entitled to such rights or interests are only entitled thereto for a limited interest, then it shall be lawful for them or him, by their or his award, to direct that the monies to be paid in respect of such right or interest, where the same shall exceed twenty pounds, shall be paid to the trustees acting under the will, conveyance, or settlement under

Compensation
for limited
interests to
be paid to
trustees.

17 & 18 Vict.
c. 97, s. 20.

which such person having such limited interest shall be interested in such rights or interests, and where there are no trustees then into the hands of trustees to be appointed under the hands and seal of the commissioners, to be held by them on trusts similar to the uses or trusts to which such rights or interests had been immediately before the payment of such monies into the bank subject to, or as near thereto as the said commissioners or assistant commissioner can ascertain; and the receipts of any trustees to whom any such monies shall be paid as aforesaid shall be good and sufficient discharges for the same: Provided always, that the payment of all such sums shall from time to time be subject to such rules and regulations, for the purpose of ensuring the payment thereof to the person or persons duly entitled to receive the same, as the said commissioners shall by any order direct.

As to sums payable in respect of lands not exceeding 20l.

20. In all cases where the sum payable by virtue of such award, in respect of any estate, right, or interest, shall not exceed twenty pounds, and the person entitled to such estate, right, or interest shall be under any disability or incapacity, such sum shall and may be paid to the guardian, committee, or husband of such person; and where any such person shall have a limited interest only in such estate, right, or interest, the whole of such sum shall and may, nevertheless, be paid to the person having such limited interest, to his or her guardian, committee, or husband, as the case may be.

18 & 19 Vict.
c. 122, s. 6.

By the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122, s. 6), there are exempted from the provisions of Part I. of that Act, relating to the regulation and supervision of buildings, "the buildings belonging to any canal, dock, or railway company, and used for the purposes of such canal, dock, or railway under the provisions of any Act of Parliament."

THE INCLOSURE ACTS AMENDMENT
ACT, 1857.

20 & 21 VICT. c. 31.

An Act to amend and explain the Inclosure Acts.

[10th August, 1857.]

20 & 21 Vict.
c. 31, s. 4.

4. For the purpose of removing all doubts as to the power of companies incorporated by special Act of Parliament for the making and maintaining of any railway, canal, docks, harbour, waterworks, or other work, to exchange land belonging to such companies under the provisions of the said Acts, be it declared and enacted, that every such company shall be deemed to be a person interested within the meaning of "The Acts for the Inclosure, Exchange, and Improvement of Land," for the purpose of exchanging land belonging to the said company, and that notwithstanding the provisions in any Act of Parliament relating to such company specially limiting the purposes to which such land belonging to the said company shall be applicable.

Exchanges of
land by rail-
way and other
companies.

CHEAP TRAINS ACT AMENDMENT ACT, 1858.

21 & 22 VICT. c. 75.

21 & 22 Vict.
c. 75, s. 1. *An Act to amend the Law relating to Cheap Trains, and to restrain the Exercise of certain Powers by Canal Companies being also Railway Companies.*

[2nd August, 1858.]

7 & 8 Vict.
c. 85.

WHEREAS by the Act passed in the session of parliament held in the seventh and eighth years of the reign of her present Majesty, chapter eighty-five, section six, it is enacted, amongst other things, with respect to the cheap trains thereby required to be provided in certain cases, that the fare or charge for each third-class passenger by any such train shall not exceed one penny for each mile travelled: And whereas it is expedient to amend the said Act in manner hereinafter mentioned: And whereas it is also expedient to amend the Act passed in the ninth year of the reign of her present Majesty, chapter forty-two, intituled "An Act to enable Canal Companies to become Carriers of Goods upon their Canals," by restraining as hereinafter mentioned the exercise of certain powers therein contained: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

8 & 9 Vict.
c. 42.

For fractions under one mile one penny may be charged, and for fractions exceeding half a mile, where the distance amounts to one mile or more, one halfpenny may be charged.

1. When the distance travelled by any third-class passenger by any train run in compliance with the provisions relating to cheap trains contained in the said Act of the seventh and eighth of Victoria, chapter eighty-five, is a portion of a mile, and, does not amount to one mile, the fare for such portion of a mile, may be one penny, or when such distance amounts to one mile, or two or more miles, and a portion of another mile, the fare or charge for such portion of a mile, if the same amounts to or exceeds one half mile, may be one halfpenny: Provided always, that for children of three years and upwards, but under twelve years of age, the fare or charge shall not exceed half the charge for an adult passenger.

This section is repealed except as to Ireland by 46 & 47 Vict. c. 34.

2. After the passing of this Act, no fare heretofore charged to or received from any third-class passenger by any such train as aforesaid shall in any proceeding to be hereafter instituted be deemed to have exceeded the rate prescribed in such case by the said Act of the seventh and eighth of Victoria, chapter eighty-five, if the same shall not have exceeded the rate of one farthing for each entire quarter of a mile travelled.

21 & 22 Vict.
c. 75, ss. 2—4.

Rates heretofore charged not exceeding those allowed by this clause not to be deemed excessive.

This section is repealed except as to Ireland by 46 & 47 Vict. c. 34.

3. Notwithstanding anything contained in the said recited Act of the ninth year of her Majesty, it shall not be lawful for any canal or navigation company, being also a railway company, or entitled to work any railway constructed under the authority of any Act of Parliament, hereafter to accept a lease of the whole or any part of the undertaking of any other railway and canal company or of any canal or navigation company, or of the tolls, dues, or charges upon or in respect of the whole or any part of any such undertaking, except under the powers of some Act or Acts heretofore passed or to be hereafter passed in which the parties to any such lease shall be specifically named and authorised to enter into the same.

Canal companies, being also railway companies, not to take leases of canals unless specially authorised.

4. This Act shall continue in force for one year next after the passing thereof, and thence to the end of the then next session of parliament.

Act to be in force for one year.
[Made perpetual 23 & 24 Vict. c. 41.]

ADMINISTRATION OF OATHS BY COMMITTEES ACT.

21 & 22 VICT. c. 78.

21 & 22 Vict.
c. 78, ss. 1—3.

An Act to enable the Committees of both Houses of Parliament to administer Oaths to Witnesses in certain Cases.

[2nd August, 1858.]

WHEREAS it is expedient that the evidence taken before the committees of either house of parliament on a private bill should be available, if desired, before the committee of the other house to which the same bill is referred, and that for this purpose the committees of the house of commons on private bills should be enabled to administer an oath to the witnesses examined before them; and it is also expedient for the convenience of the house of lords that the committees of that house should be enabled to administer an oath to the witnesses examined before them, instead of such witnesses being as heretofore sworn at the bar of the house: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

[1 is repealed by the *Parliamentary Witnesses Oaths Act*, 1871 (34 & 35 Vict. c. 83).]

Any committee of H. L. may administer oath.

2. Any committee of the house of lords may administer an oath to the witnesses examined before such committee.

False evidence perjury.

3. Any person examined as aforesaid who shall wilfully give false evidence shall be liable to the penalties of perjury.

RAILWAY COMPANIES ARBITRATION ACT, 1859.

22 & 23 VICT. c. 59.

*An Act to enable Railway Companies to settle their Differences
with other Companies by Arbitration.*

22 & 23 Vict.
c. 59, ss. 1—3.

[13th August, 1859.]

FOR the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows ; (that is to say,)

1. This Act may for all purposes be cited as "Railway Companies Arbitration Act, 1859:" and the expression "railway companies" in this Act extends to and includes all persons being the owners or lessees of, and all contractors working, any railway upon which steam power is used.

Short title.
"Railway
Companies."

2. Any two or more railway companies, whether already or hereafter incorporated (in this Act called "the companies"), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this Act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the companies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively.

Power for
railway com-
panies to refer
matters to
arbitration.

As to the effect of this Act, see *G. W. Ry. Co. v. Waterford & Limerick Ry. Co.*, 17 Ch. D. 493; 3 Nev. & Mac. 546.

3. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Act theretofore entered into between the companies, or any of the terms, conditions, or stipulations thereof.

Power to alter
or revoke
agreements
for reference.

22 & 23
 Vict. c. 59,
 ss. 4—11.

Agreements
 to be carried
 into effect.

Reference to
 a single
 arbitrator.

Reference to
 two or more
 arbitrators.

4. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the companies, and may and shall be carried into full effect.

5. Where the companies agree, the reference shall be made to a single arbitrator.

6. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit,

Where there are two companies the reference shall be made to two arbitrators:

Where there are three or more companies the reference shall be made to so many arbitrators as there are companies.

Appointment
 of arbitrators
 by companies.

7. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

Appointment
 of arbitrators
 by Board of
 Trade.

8. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the company so failing.

Appointment
 of arbitrators
 by companies
 to supply
 vacancies.

9. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment
 of arbitrators
 by Board of
 Trade to
 supply
 vacancies.

10. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade may appoint an arbitrator; and the arbitrator so appointed by the Board of Trade shall for the purposes of this Act be deemed to be appointed by the company so failing.

Appointment
 of arbitrator
 not revocable.

11. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other company, or every other company in writing under their common seal.

12. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

22 & 23
Vict. c. 59,
ss. 12—19.

Appointment
of umpire by
arbitrators.

13. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment
of umpire by
Board of
Trade.

14. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment
of umpire by
arbitrators
to supply
vacancy.

15. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Appointment
of umpire by
Board of
Trade to
supply
vacancy.

16. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding
arbitrators
and umpires
to have
powers of
predecessors.

17. Where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Reference to
umpire.

18. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the lord ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

Power for
arbitrators,
&c. to call for
books, &c.
and admin-
ister oath.

19. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may

Procedure in
the arbitra-
tion.

23 & 23
Vict. c. 59,
ss. 20—26.

proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration
 may proceed
 in absence of
 companies.

20. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

Several
 awards may
 be made.

21. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made
 in due time
 to bind all
 parties.

22. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the companies.

Power for
 umpire to
 extend period
 for making
 his award.

23. Provided always, that (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not
 to be set
 aside for
 informality.

24. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards to be
 obeyed.

25. Except only as far as the companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted, or suffered shall be done, omitted, or suffered accordingly.

Agreements,
 arbitrations,
 and awards to
 have effect.

26. Full effect shall be given by all the superior Courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the companies respectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance

with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by distress infinite on the property of the companies respectively, or by any other process against the companies respectively or their respective property that the Courts or any judge thereof shall direct.

22 & 23
Vict. c. 59,
ss. 27—29.

Some words at the end of the section which are repealed by 44 & 45 Vict. c. 59, are omitted.

Where there is an agreement to refer to arbitration under this Act, the Court will give effect to the agreement at the instance of either party, and will not entertain an action (*Watford & Rickmansworth Ry. Co. v. L. & N. W. Ry. Co.*, 8 Eq. 231. See, too, *Shrewsbury & Birmingham Ry. Co. v. Stour Valley Ry. Co.*, 2 D. M. & G. 886; *Hodgson v. Ry. Passengers Assurance Co.*, 9 Q. B. D. 188).

But an agreement to refer to a single arbitrator to be appointed by both companies does not oust the jurisdiction of the Court where the tribunal for arbitration has not been created (*Wolverhampton & Walsall Ry. Co. v. L. & N. W. Ry. Co.*, 16 Eq. 432).

Where an agreement containing an arbitration clause is scheduled to an Act of Parliament which enacts that the companies shall fulfil all the provisions and stipulations in the agreement, the effect is to create a statutory tribunal, and to deprive the Courts of jurisdiction (*Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.*, L. R. 2 H. L. Sc. 347).

27. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively.

Costs of
arbitration
and award.

28. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs.

Payment of
costs.

29. The submission to any arbitration in accordance with this Act may at any time be made a rule of any of her Majesty's superior courts of record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the Court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the Court think fit.

Submission to
arbitration to
be made a rule
of Court.

INCOME TAX ACT, 1860.

23 VICT. c. 14.

23 Vict. c. 14, *An Act for granting to Her Majesty Duties on Profits arising*
ss. 5, 6. *from Property, Professions, Trades, and Offices.*
 [3rd April, 1860.]

Commis-
 sioners for
 special pur-
 poses to assess
 railways;

5. No assessment shall be made under this Act by the commissioners for general purposes in respect of the annual value or profits and gains arising from any railway, but in lieu thereof every such assessment shall be made by the commissioners for special purposes and the said last-mentioned commissioners shall notify the assessment to the secretary or other officer of the company upon which the same shall be made, and the amount of such assessment shall be paid, collected, and levied in like manner as any other assessment made by the said commissioners for special purposes.

and also the
 persons em-
 ployed by
 railway com-
 panies.

6. In like manner as aforesaid the commissioners for special purposes shall assess the duties payable under schedule (E.) in respect of all offices and employments of profit held in or under any railway company, and shall notify to the secretary or other officer of such company the particulars thereof, and the said assessment shall be deemed to be and shall be an assessment upon the company, and paid, collected, and levied accordingly; and it shall be lawful for the company or such secretary or other officer to deduct and retain out of the fees, emoluments, or salary of each such officer or person the duty so charged in respect of his profits and gains.

THE CLEARING HOUSE ACT (IRELAND).

23 VICT. c. XXIX.

An Act for more effectually carrying out the Clearing House System in Ireland, and for facilitating legal Proceedings in relation thereto. [15th May, 1860.]

23 Vict.
c. XXIX.

WHEREAS for some time past arrangements have subsisted between several railway, canal, and steam packet companies and public carriers in Ireland for facilitating the transmission of the through traffic in passengers, animals, minerals, goods, and all other descriptions of traffic passing over and upon railways, canals, and steam packets belonging to different companies, for the purpose of affording in respect to such passengers, animals, minerals, goods, and such other traffic the same or the like facilities of through booking and charges, and otherwise, as if such railways, canals, and steam packets had belonged to one company, and for the settlement of the accounts of the receipts for through traffic in which two or more companies or parties are interested, and of the accounts arising out of the use by a company or other party of the carrying stock belonging to other companies or parties, and for the audit and adjustment of such traffic accounts of companies or parties as may be submitted to the clearing house for that purpose, which arrangements are conducted under the control and superintendence of a committee appointed by the several railway, canal, and steam packet and other companies, and persons who are parties thereto, which committee is in this Act designated "the committee" and the business of such committee has heretofore been and is now carried on under the name or style of the Irish Railway Clearing House (hereinafter designated "the Clearing House") in Dawson Street in the City of Dublin: And whereas the aforesaid arrangements have been productive of great convenience to the public and to the parties thereto, and a considerable saving of expense in the transmission of passengers, animals, minerals, goods, and other traffic over and upon the railways, canals, and steam packets belonging to such parties: And whereas difficulties have arisen in carrying the objects of the clearing house into effect in consequence of the committee not possessing the power of prosecuting or defending actions or suits, or taking other legal proceedings, and it is therefore expedient to remove such difficulties, and to extend and improve the clearing house system and the pro-

23 Vict.
c. xxix.
ss. 1—4.

ceedings connected therewith ; but the purposes aforesaid cannot be effected without the authority of parliament : May it therefore please your Majesty that it may be enacted ; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :—

Parties to the clearing house to be subject to the provisions of this Act.

1. The several companies, corporations, partnerships, and persons who at the time of the passing of this Act are parties to the clearing house shall be subject to the provisions of this Act, and all such companies, corporations, partnerships, and persons as shall respectively become, in manner hereinafter mentioned, parties to the clearing house, shall be subject to the like provisions ; (that is to say,) every other company, corporation, partnership, and person who now is or are or hereafter may be engaged, or is or are or may be empowered to be engaged, either solely or in conjunction with any other business, in the business of carrying passengers, animals, minerals, goods, and moveable chattels and effects of whatever kind, or any of them, by land and water, or by land or by water, to or from any part or parts of Ireland, and all persons who shall be engaged in any such carrying business as aforesaid as lessees of or contractors, with any such company, corporation, partnership, or person.

Other parties may join with assent of committee.

2. If any company, corporation, partnership, or person who may not be a party to the clearing house shall, by writing sealed with the common seal of any such company or corporation, or under the hand of any such partnership or person, request the committee to be admitted a party to the clearing house, and the committee shall assent to such request, such company, corporation, partnership, or person shall from the time of such assent being given, or at such other time as may be specified in the said request, become a party to the clearing house.

Parties may retire on giving notice.

3. If any party to the clearing house shall desire to retire therefrom, or cease to be a party thereto, and shall give notice thereof in writing to the committee, such party shall, at the expiration of three calendar months from the time when such notice shall be given, or if a more distant time shall be stated in such notice then at the time so stated, cease to be a party to the clearing house : Provided always, that such notice shall, in the case of a company or corporation, be sealed with the common seal of such company or corporation, and in the case of a partnership to be under the hands of at least two copartners ; provided also, that such party shall have paid and discharged all sums due by such party to the committee.

Committee may give parties notice to retire.

4. If not less than two thirds of the committee present at a meeting specially summoned shall, by writing signed by their secretary or by two members of the committee, give notice to any

company, corporation, partnership, or person that they or he, as the case may be, shall cease to be a party to the clearing house at a time named in such notice, not being less than one calendar month from the time of giving such notice, such company, corporation, partnership, or person shall, at the time so named, cease to be a party to the clearing house.

23 Vict.
c. xxix.
ss. 5—8.

5. Subject to the provisions hereinafter contained, the committee shall consist of delegates appointed by parties to the clearing house only, and shall be composed in the manner following; (that is to say,) each company or corporation shall appoint a delegate being a director of such company or member of such corporation, each partnership shall appoint one of its members to be a delegate, and each person may appoint himself or another as a delegate, such appointment, in the case of a company or corporation, to be under seal, and in the case of a partnership to be under the hands of at least two copartners, and in the case of a person to be under the hand and seal of such person: Provided always, that any such delegate may represent two or more parties on the committee, but shall in no case have more than one vote; provided also, that the acts of the committee shall be valid and binding, notwithstanding the absence of any such delegate, or that any company, corporation, partnership, or person may happen to be unrepresented at any meeting of the committee.

Appointment
of the com-
mittee.

6. No company, corporation, partnership, or person hereafter admitted a party to the clearing house shall be entitled to be represented on the committee by a delegate, unless the written request to be so admitted shall specify that the party applicant desires to be so represented, and shall specify the mode in which such delegate is to be from time to time appointed and removed, and unless the committee accept this mode of appointment or removal as a proper one; and the mode so specified for appointing any such delegate shall not be altered without the consent of the committee.

Parties here-
after admitted
may be repre-
sented on the
committee.

7. No person claiming to be a member of the committee under an appointment made after the passing of this Act shall be or shall be entitled to act as a member thereof until the committee have resolved that they are satisfied that such member has been duly appointed, and the decision of the committee that such member is duly appointed shall not only be evidence of such due appointment, but shall, until the committee otherwise order, make such person to be a member of the committee though in fact he is not duly appointed.

Evidence of
appointment.

8. Members of the committee which at the time of the passing of this Act carries on business under the name or style of the Irish Railway Clearing House (in this Act designated "The Clearing House") in Dawson Street in the city of Dublin shall, without any further appointment, be members of the committee under this Act.

Committee.

23 Vict.
c. xxix.
ss. 9—11.

Meetings of
the committee,
quorum, &c.

9. The committee shall meet once a month, and at any other times whereof the secretary shall, at the written request of the chairman for the time being or any two members of the committee, give at least ten days' notice in writing to every company, corporation, partnership, and person who may be parties to the clearing house, or to the secretary of every such company and corporation, and every such meeting may be adjourned from time to time as the committee shall think fit; and meetings and adjourned meetings of the committee shall be held at the offices of the clearing house in Dawson Street aforesaid, except when the committee shall have appointed some other place, and then at such other place; and in order to constitute a meeting of the committee there shall be present at least three members, including the chairman; and, except where otherwise provided, all questions at every meeting shall be determined by the majority of votes of the committee present, and in case of an equal division of votes the chairman of the meeting shall have a casting vote in addition to his vote as one of the committee; and notice of the business to be brought before any meeting shall, at least three days before the day of such meeting if the meeting be an ordinary one, and at least ten days before the day of such meeting if it be a special one, be given to every company, corporation, partnership, and person who are parties to the clearing house, or the secretary of every such company and corporation.

Appointment
of the chair-
man.

10. Until the first meeting of the committee, which shall be held after the passing of this Act, Sir Edward McDonnell, or other the chairman of the committee for the time being, shall continue in office; and at the first meeting of the committee which shall be held after the passing of this Act, and at the meeting to be held in the month of January in each succeeding year, the members of the committee present at the meeting shall, if they think fit, either continue in office the chairman for the time being, or choose another chairman; and a general meeting of the committee specially summoned shall have power to remove any chairman; and if any chairman shall die or resign or be removed, the committee shall have power as soon as may be to choose some other person to fill the vacancy thereby occasioned; but every chairman elected to supply a vacancy other than at the meeting in the month of January in any year shall continue in office so long only as the person in whose place he shall be so elected would have been entitled to continue if such death, resignation or removal had not happened: Provided always, that it shall not be necessary that the person chosen as chairman be a delegate of any of the companies, corporations, partnerships, or persons, parties to the clearing house, but in case he shall not be a delegate he shall not be entitled to vote on any question, unless in the case of an equality of votes, when he shall be entitled to give the casting vote.

In the absence
of the chair-
man com-
mittee to elect
a chairman.

11. If at any meeting of the committee the chairman shall not be present the members of the committee present shall choose one of their number to be chairman of such meeting.

12. The committee may appoint sub-committees consisting of such number of members of the committee as they think fit, and shall fix the quorum of such sub-committees, and may grant to such sub-committees power to do any acts relating to the affairs of the clearing house which the committee could lawfully do, and may from time to time think proper to entrust to them; and all questions at any meeting of the sub-committees shall be determined by a majority of the votes of members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of such sub-committee: Provided always, that the acts, minutes, and proceedings of the sub-committees shall from time to time be submitted to the committee, but all such acts, minutes, and proceedings shall be held to be valid, and shall take effect, unless and until they are overruled by the committee.

23 Viet.
c. xxix.
ss. 12—16.

Sub-com-
mittee and
meetings
thereof.

13. At every meeting of any such sub-committee the members thereof present shall appoint one of their number to be chairman of such meeting, who shall be entitled to give one vote as an ordinary member, and, in case of an equality of votes, shall be entitled to give another vote as the casting vote.

Chairman of
sub-com-
mittee.

14. James Waller Elwin shall be the secretary to the committee until his death, or resignation or removal, whichever shall first happen, and the committee shall have the power to remove him and all future secretaries, and in the event of the resignation or death or removal as aforesaid of any secretary the committee shall appoint a secretary in his stead.

Appointment
of secretary.

15. Any money which shall be received by the committee shall be held by them as trustees for the party or parties to whom the committee shall decide such money to be payable, but no member of the committee shall be answerable for any such money as may be lost or withheld by reason of any cause other than his own personal misconduct.

As to moneys
received by
committee.

16. The accounts of the clearing house, and the balances due to and from the several parties thereto, shall be settled and adjusted by the secretary to the committee for the time being, which secretary shall also settle and determine the amount to be from time to time contributed to the funds of the clearing house by the parties thereto; and in case of any difference respecting such accounts, the decision of the committee to the effect that any balance or sum is payable by any company, corporation, partnership, or person, then or theretofore party to the clearing house, shall be final and conclusive; and so long as any such balance or sum which the committee shall decide to be payable by any party, or any part thereof, shall not be paid, interest shall accrue and be paid on the same at such rate per centum per annum, not exceeding seven pounds per centum, as the committee shall from time to time determine, and such sum or balance, with interest thereon as aforesaid, shall be a debt due to the committee.

Accounts to
be settled
and balance
ascertained
and declared
by the com-
mittee.

Interest on
balances in
arrear.

23 Vict.
c. xxix.
ss. 17—21.

Expenses to
be paid out of
the funds of
the clearing
house.

17. The committee shall out of the funds of the clearing house pay all the expenses of the clearing house, and all costs, charges, damages, and expenses which the members of the committee or sub-committee, or any or either of them, as such members or member, or which the secretary as nominal plaintiff or defendant, or other party on behalf of the committee, may bear, sustain, or be put to; and the members of the committee and secretary shall be completely indemnified and saved harmless out of the funds of the clearing house, and by the parties thereto, of, from, and against all actions, suits, and proceedings of any sort, costs, charges, damages, and expenses, to which they or any of them may in any way be subjected as members or member of the committee, or as secretary to the committee, by reason of anything which they or he may *bonâ fide* do or omit to do, whether such deed or omission be within their powers or not.

Committee
may sue for
balances or
sums due.

18. The committee may, by action of debt in the name of their secretary, in any Court of competent jurisdiction in Dublin, Westminster, or Edinburgh, as the case may be, recover from any company, corporation, partnership, or person any balance or sum, with interest thereon, not exceeding the rate of seven pounds per centum per annum, which the committee shall decide to be payable by such company, corporation, partnership or person, whether to any other company, corporation, partnership, or person, or on account of the clearing house, and whether such company, corporation, partnership, or person be still at the time of such decision or has then ceased to be a party to the clearing house, and whether such sum or balance and interest shall or shall not have been previously ascertained by the secretary to be payable.

Proof in case
of plea of
never in-
debted.

19. If in any action brought according to this Act the defendants shall plead that they never were indebted, or any plea in substance amounting to a denial that the defendants ever were indebted, the plaintiff shall, on issue joined on such plea, be entitled to a verdict, upon proof that the committee decided the sum in question to be payable by the defendants, and that the defendants were either at the time of such decision or at some previous time a party to the clearing house, and in the latter case, upon further proof that such sum was decided to be payable in respect of some transactions, matters, or expenses which happened or were sustained while the defendants were parties to the clearing house.

Plea.

20. The defendants in such action may plead any matter showing that they have, since the time of the decision, discharged the sum or balance and interest so decided to be payable, but shall not plead any plea denying the plaintiff to be secretary.

Evidence in
support of
summons,
rule, or action.

21. In support of any action under this Act, it shall not be necessary as part of the opening case for the applicant or plaintiff to prove otherwise than as hereafter mentioned that the members of the committee were duly appointed, or that the meeting was

duly instituted or holden, or that the proceedings were regular, but it shall be sufficient as *prima facie* evidence of those facts respectively to prove that the decision or resolution in question was made at a meeting purporting to be a meeting of the committee.

23 Vict.
c. xxix.
ss. 22—25.

22. On the trial of any action under this Act any company, corporation, partnership, or person who may have acted as a party to the clearing house shall, upon proof thereof, be estopped from contending that at the time when they so acted they were not a party thereto, and they shall also be precluded from repudiating any accounts adjusted by or authorized to be adjusted by the committee, or the acts of their respective delegates during the time such delegate was a member of the committee.

Parties to the clearing house estopped from denying that they are such parties or repudiating accounts.

23. The committee shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by them, and of the orders and proceedings of all their meetings, to be duly entered in books to be kept by them for that purpose; and every such entry shall be signed by the chairman of the meeting at which such appointments, contracts, orders, or proceedings respectively took place, who shall add the word "chairman" to his signature, and which entries may be made and signed either at or after the meetings to which they respectively relate; and every entry purporting to be so signed shall be received as evidence in all Courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being members of the committee, or of the signature of such chairman, or of the fact of his having been chairman, all which last-mentioned matters shall be presumed till the contrary be proved.

Entries in books.

24. On the trial of any such action, after it is proved to the satisfaction of the Court or judge trying the cause that such company, corporation, partnership, or person is or had once been a party to the clearing house, the books kept by the committee shall be *prima facie* evidence of the truth of the matters therein stated and contained, and such books and all entries therein may be proved by copies, and a certificate that any writing is such a copy subscribed to or endorsed on such writing, and purporting to be signed by the chairman or secretary of the committee, shall be sufficient proof that such writing is a true copy, without proof of the signature or of the official character of the person who signs it, and such copy shall have the same effect in evidence as the originals respectively would have had; and the secretary, although the nominal plaintiff, and the members of the committee, shall be competent witnesses either for the plaintiff or for the defendants.

Books of the committee or certified copies thereof to be *prima facie* evidence, and the committee and secretary to be competent witnesses.

25. The committee to the clearing house may in all cases sue and be sued in the name of the secretary to the committee; and

Suits to be in the name of

23 Vict.
c. xxix.
ss. 28—29.

the secretary
to the com-
mittee.

in all proceedings at law and in equity, and in bankruptcy or insolvency, or of any other sort, whether civil or criminal, the name of the secretary may be used instead of the names of the members of the committee and of the parties to the clearing house, and proofs in cases of bankruptcy, insolvency, or winding-up affairs may be made by the said secretary.

In criminal
proceedings
property of
committee to
be deemed the
property of
secretary.

26. In any indictment or information for any felony or misdemeanor, wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, and the same shall either belong to the committee, or be in their custody or in the custody or possession of any officer, clerk, or servant to the committee, or of any person employed for the purpose or in the capacity of clerk or servant by the committee, or in or on any building or land used for the purposes of the clearing house, or shall be used or intended to be used for the purposes of the clearing house, it shall be sufficient to state such property to belong to the secretary of the committee.

Criminal pro-
ceedings to be
prosecuted in
the name of
secretary.

27. In any indictment for embezzlement wherein it shall be necessary to state the party charged with the embezzlement to have been the clerk or servant of some master or masters, or to have been employed for the purpose or in the capacity of clerk or servant by some master or masters, and such masters shall have been the committee, it shall be sufficient in such indictment to name the secretary of the committee in every place in such indictment where the names of the members of the committee would but for this enactment be required to be inserted.

Service of
notices.

28. Every notice or requisition on the business of the clearing house, or given pursuant to this Act, shall be sufficient if it be in writing, signed by the secretary of the committee or by the secretary or other officer of the company, corporation, or by the partnership or person giving the same, and if it be sent by the general post addressed to the secretary of the company or corporation, or to the partnership or person for whom the same is intended, or to the secretary, at the office of the clearing house, in case such notice or requisition be intended for the committee; and proof of such notice or requisition being deposited in any public letter box or receiving house for letters intended to be forwarded by the general post shall be deemed proof of the due service of such notice or requisition; and notices or requisitions for each member of the committee shall be sufficient if sent in manner aforesaid addressed to him at his private residence, or at the principal office of the company or corporation, or the place of business of the partnership or person whom he represents.

Service of
writs, &c.

29. Every writ, summons, intimation, or other document in and about all legal proceedings in the name of the secretary to the committee pursuant to this Act against any company, corporation, partnership, or person who shall be or shall have been a party to

the clearing house may be served or given, as the case may be, by forwarding the same by post in a registered letter from the chief post office in Dublin, addressed in the case of a company or corporation to the secretary thereof at the principal office of such company or corporation, and in the case of all other parties to such parties at their respective places of business, and proof of such writ, summons, intimation, or other document having been so forwarded shall be deemed proof of the due service thereof.

23 Vict.
c. xxix.
ss. 30—33.

30. In all pleadings or proceedings, civil or criminal, it shall be sufficient to mention the companies, corporations, partnerships, and persons who are parties to the clearing house by the description of "the parties to the clearing house mentioned in the Clearing Act (Ireland), 1860," and to describe the committee by the description of "the clearing house committee mentioned in the Clearing Act (Ireland), 1860," instead of stating the names of the individual parties and members.

Description of parties to the clearing house and committee in legal proceedings.

31. In all cases where the name of the secretary to the committee shall be used under the authority of this Act it shall be sufficient to name and describe him, and to state the authority for using his name.

Description of the secretary in legal proceedings.

32. Upon the death or removal or resignation of any secretary no action or suit, or other proceeding pending in his name as plaintiff or defendant, or otherwise, either on behalf of or against the committee, shall abate or be stayed, but as soon as another secretary shall be appointed the name of such new secretary shall be thereafter used; and in an action at law such name shall, whether before or after judgment, be introduced by suggestion, to which no plea or demurrer shall be allowed, and the omission to make such suggestion, and an erroneous suggestion, shall be mere irregularities, and shall, on the application of the committee, or of the party opposed to the committee, be rectified, but shall not otherwise be taken advantage of.

Actions, &c. not to abate on death or removal or resignation of secretary.

33. All such companies, corporations, partnerships, and persons as are mentioned in the first section of this Act, whether parties to the clearing house or not, may agree to refer and may refer to the arbitration of the committee or the said sub-committee, or any arbitrators and umpire to be chosen by or out of the committee, any existing or future differences, questions, or other matters whatsoever in which any such companies, corporations, partnerships, and persons then are or thereafter shall be mutually interested, and which they might settle or dispose of between themselves, and may delegate to the committee or the said sub-committee, or to the arbitrators and umpire to be chosen by or out of the committee, as the case may be, power to determine all or any of the terms of any contract to be made between the parties to any such reference; and all the powers conferred on railway companies by "The Railway Companies Arbitration Act, 1859," may be exercised by and shall

Power to committee to arbitrate on questions referred to them, or to appoint arbitrators.

23 Vict.
c. xxix.
ss. 34—36.

in reference to this Act be held to apply to and include all such parties as aforesaid; and all the provisions of the said "Railway Companies Arbitration Act, 1859," with respect to the appointment of arbitrators and umpire, either in the first instance, or to supply vacancies occasioned by death, incapacity, unfitness, or failure to act, and whether by the companies or by the Board of Trade, and the powers of arbitrators and umpire, and the proceedings in the arbitration, may be exercised by or in reference to the committee and the said sub-committee, and arbitrators and umpire to be chosen by or out of the committee, as the case may be, on behalf of any such parties as aforesaid; and all the provisions of the last-mentioned Act with respect to awards and the costs of the arbitration and awards shall be held applicable to and shall apply to any references to and awards to be made by the committee or the said sub-committee, or any arbitrators or umpire to be chosen by or out of the committee.

Submission to
arbitration
may be made
rule of Court.

34. The submission to any arbitration in accordance with this Act may at any time be made a rule of one of her Majesty's superior courts of record at Dublin on the application of any party interested, and the Court may remit the matter to the committee or the said sub-committee, or any arbitrator or arbitrators to be chosen by or out of the committee, with any direction the Court think fit.

Expenses of
Act.

35. All the costs, charges, and expenses of obtaining and passing this Act, or incident thereto, shall be paid by the committee out of such moneys as shall come to their hands after the passing of this Act, or shall be in their hands at the time of the passing thereof.

Short title.
Public Act.

36. This Act shall be called "The Clearing Act (Ireland), 1860," and shall be deemed to be a public Act, and as such shall be judicially noticed.

THE RAILWAYS ACT (IRELAND), 1860.

23 & 24 VICT. c. 97.

An Act for amending and making perpetual the Railways Act, Ireland (1851). [13th August, 1860.]

23 & 24
Vict. c. 97,
ss. 1, 2.

WHEREAS it is expedient that "The Railways Act (Ireland), 1851," should be amended as hereinafter provided, and that with such amendments the said Act should be made perpetual: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

14 & 15 Vict.
c. 70.

1. The words "twenty-one" shall be substituted for the words "thirty-one" in the eighth section of the said Act, and the word "fourteen" shall be substituted for the words "twenty-one" in the ninth section of the same Act.

Periods of
notices
shortened.

2. The twenty-second section of the said Act is hereby repealed; and in lieu thereof be it enacted, that when the company are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions in the said Act, as amended by this Act, it shall be lawful for the company, at any time after the arbitrator shall have framed his draft award, upon depositing in the Bank of Ireland as herein directed such sum or sums as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorized to be purchased or taken by the company, and mentioned in such draft award, or of the several interests in such lands in respect of which no agreement shall have been come to between the company and the persons entitled thereto, to enter upon and use such lands for the purpose of the railway and works of the company; and the arbitrator shall, upon the request of the company, at any time after he shall have framed such draft award, certify under his hand the sum or sums which in his opinion should be so deposited by the company in respect of any lands mentioned in such draft award, or of any such interests therein as aforesaid, before they enter upon or use the same as aforesaid, and the sum or sums to be so certified shall be

After deposit
of draft
award com-
pany may,
upon deposit
of such
amount as
arbitrator
may think fit,
enter on lands.

23 & 24
 Vict. c. 97,
 ss. 3, 4.

the sum or sums set forth in such draft award as payable by the company in respect of such lands or of such interests in such lands in respect of which no agreement shall have been come to between the company and the persons entitled thereto, or such greater amounts as to the arbitrator under the circumstances of the case shall seem proper; and notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the said award, the delivery of certificates, and other proceedings under the said Act as amended by this Act, and under this Act, shall be had, and payments made as if such entry and deposit had not been made: provided that the company shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the purchase and compensation money payable by them in respect of any lands so entered upon from the time of their entry until the time of the payment of such purchase-money and compensation to the person entitled thereto, or where, under the provisions of the said Act as amended by this Act, such purchase-money or compensation is required to be paid into the said bank, then until the same with such interest is paid into such bank accordingly; and where under this provision interest is payable on any purchase or compensation money, the certificate to be delivered by the company in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

Mode of
 deposit.

3. The twenty-third section of the said Act is hereby repealed; and in lieu thereof be it enacted, that the sum or sums to be deposited as aforesaid in respect of any lands or any interests in any lands shall be paid into the bank of Ireland in the name and with the privy of the Accountant General of the Court of Chancery in Ireland, to be placed to his account there, to the credit of the company (describing the company by its proper name), in the matter of "The Railways Act (Ireland), 1851," and of the respective owners of the lands or of the interests in lands in respect of which the same is or are paid as aforesaid, subject to the control or disposition of the said Court, and upon such deposit the cashier of the said bank shall give to the company, or the party paying in such money by their direction, a receipt for the same.

Deposit to
 remain as a
 security, and
 to be applied
 under direc-
 tion of the
 Court of
 Chancery.

4. The twenty-fourth section of the said Act is hereby repealed; and in lieu thereof it is enacted, that the sum or sums of money so deposited as last aforesaid shall remain in the bank by way of security to the parties respectively in respect of whose interests in the lands which shall so have been entered upon, such sum or sums shall have been deposited for the payment of the money to become payable by the company to such parties respectively, for their respective interests in such lands under the award of the arbitrator; and the money so deposited may, on application by petition of the company, be ordered to be invested in bank annuities or government securities, and accumulated; and upon such payment as

aforesaid by the company it shall be lawful for the Court of Chancery in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the company; or in default of such payment as aforesaid by the company, it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

23 & 24
Vict. c. 97,
ss. 5—7.

5. If part only of the lands charged with any rentcharge or fee-farm rent be required to be taken for the purposes of the special Act, the apportionment of any such rent or rentcharge may be settled by agreement between the party entitled to the same and the owner of the lands on the one part and the promoters of the undertaking on the other part, and if such apportionment be not settled by agreement the same shall be settled by the arbitrator; and the owner of the rentcharge or fee-farm rent shall have all the same rights and remedies for the recovery of such apportioned part, as against the lands not required for the purposes of the special Act, as previously to such apportionment he had for recovery of the entire.

Apportion-
ment of rent-
charge, &c.
where part
only of the
land charged
is required.

6. If any lands shall be comprised in a lease for a life or lives or for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by the arbitrator, and after such apportionment the lessee of such lands shall as to all future accruing rent be liable only to so much of the rent as shall be apportioned in respect of the lands not required for the purposes of the special Act; and as to the land not so required, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only had been included in the lease.

Apportion-
ment of rent
of lands under
lease where
part only of
such lands is
required.

7. In case upon the trial of any traverse under the provisions of the said Act it shall appear that the sum awarded to the traverser by the jury shall be less than the sum awarded by the arbitrator, it shall be lawful for the judge, if he shall think fit, to adjudge that such traverser is not entitled to any costs of such traverse, or

Costs in case
of traverse.

23 & 24
Vict. c. 97,
ss. 8, 9.

that the company is entitled to costs not exceeding the sum of ten pounds against such traverser; and such adjudication of such judge shall be entered in the crown book, and such costs so awarded shall be deducted from the purchase or compensation money payable by the company to such traverser, or shall be recovered from him by distress in like manner as is provided by the fifty-third section of "The Lands Clauses Consolidation Act, 1845," with respect to costs payable to promoters.

Acts to be as
one Act, and
to be per-
petual.

8. "The Railways Act (Ireland), 1851," as amended by this Act, and this Act, shall be read together as one Act, and shall be made perpetual, and this Act shall be held to be incorporated with that Act in any Act already or hereafter incorporating that Act.

Short title.

9. This Act may be cited as "The Railways Act (Ireland) 1860."

LANDS CLAUSES ACT AMENDMENT
ACT, 1860.

23 & 24 VICT. c. 106.

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rent-charge, Annual Feu Duty or Ground Annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.

23 & 24
Vict. c. 106,
ss. 1, 2.

[20th August, 1860.]

WHEREAS it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rent-charge, annual feu duty or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.

Part of
sect. 10 of
recited Act
repealed.

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell

Sects. 10 and
11 of recited
Act, as to
power to sell,
&c. lands for
an annual
rentcharge,
and to recover,
extended to

23 & 24
 Vict. c. 106,
 ss. 3—5.

all sales, &c.
 where parties
 are under
 disability.

Similar pro-
 viso with
 regard to
 lands sold
 under sect. 10
 of 8 & 9 Vict.
 c. 19.

or convey such lands, or to receive such compensation, except under the provisions of the said Act.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Amount of
 rentcharge to
 be settled
 in manner
 directed in the
 9th section of
 recited Acts.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual, made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

As to the practical difficulty arising upon this section where the land taken is part of a farm let at an entire rent, or is in hand, see note to Davidson's Conveyancing, vol. II., pt. I., p. 576.

If lands pur-
 chased by way
 of rentcharge,
 borrowing
 powers to be
 reduced pro-
 portionally.

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only, for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent-

charge, annual feu duty or ground annual, so for the time being payable.

23 & 24
Vict. c. 106,
ss. 7, 8.

[6 is repealed by the *Municipal Corporations Act, 1882* (45 & 46 Vict. c. 50), s. 5.]

7. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the admiralty or of the war department or for the defence of the realm, it shall be lawful for her Majesty's principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the *Lands Clauses Consolidation Act, 1845*, and by the *Lands Clauses Consolidation (Scotland) Act, 1845*, given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act, and all the powers and provisions thereof shall, if used by her Majesty's principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four, for the purpose of being used and made available by the principal officers of her Majesty's Ordnance, and had been transferred to the said principal secretary for the time being by the eighteenth and nineteenth Victoria, chapter one hundred and seventeen, for the purposes aforesaid: Provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said Act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal secretary for the time being under the said last-mentioned statutes, or either of them.

Power to
Secretary for
War to use the
powers given
to promoters
of under-
takings by
8 & 9 Vict.
c. 18.

8. This Act shall be read and construed as part of the said *Lands Clauses Consolidation Act, 1845*, or of the *Lands Clauses Consolidation (Scotland) Act, 1845*, in all matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "*The Lands Clauses Consolidation Acts Amendment Act, 1860.*"

This Act and
8 & 9 Vict.
cc. 18 and 19,
to be con-
strued to-
gether.

MALICIOUS INJURIES TO PROPERTY ACT, 1861.

24 & 25 VICT. c. 97.

**24 & 25
Vict. c. 97,
ss. 4, 33, 35.**

*An Act to consolidate and amend the Statute Law of England
and Ireland relating to Malicious Injuries to Property.*

[6th August, 1861.]

Setting fire to
any railway
station.

4. WHOSOEVER shall unlawfully and maliciously set fire to any station, engine house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding *two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

* [Five,
27 & 28 Vict.
c. 47, s. 2.]

Injuries to Bridges, Viaducts, and Toll Bars.

Injury to a
public bridge.

33. Whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct, over or under which bridge, viaduct, or aqueduct any highway, railway, or canal shall pass, or do any injury with intent and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than †three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male, under the age of sixteen years, with or without whipping.

† [Five.]

Placing wood,
&c. on rail-
way with
intent to
obstruct or
overthrow any
engine, &c.

Injuries to Railway Carriages and Telegraphs.

35. Whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing

belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen, with or without whipping.

24 & 25
Vict. c. 97,
ss. 38—38.

36. Whosoever by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any railway, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Obstructing
engines or
carriages on
railways.

A person who alters the signals, or makes signals with his arms, and thereby causes a train to slacken speed, is guilty of obstructing the train within the meaning of this section (*R. v. Hadfield*, 39 L. J. M. C. 131; L. R. 1 C. C. 253; *R. v. Hardy*, 40 L. J. M. C. 62; L. R. 1 C. C. 278).

37. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years with or without hard labour: Provided that if it shall appear to any justice, on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding ten pounds as to the justice shall seem meet.

Injuries to
electric or
magnetic
telegraphs.

38. Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding

Attempt to
injure such
telegraphs.

24 & 25 Vict.
c. 97, s. 38.

section mentioned, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding ten pounds as to the justice shall seem meet.

OFFENCES AGAINST THE PERSON ACT, 1861.

24 & 25 VICT. c. 100.

*An Act to consolidate and amend the Statute Law of England
and Ireland relating to Offences against the Person.*

[6th August, 1861.]

24 & 25
Vict. c. 100,
ss. 32, 33.

32. WHOSOEVER shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than *three years—or to be imprisoned for any term not exceeding two years, with or without hard labour, and if a male under the age of sixteen years, with or without whipping.

Placing wood,
&c. on a rail-
way, with
intent to
endanger
passengers.

* [Five, 27 &
28 Vict. c. 47,
s. 2.]

33. Whosoever shall unlawfully and maliciously throw, or cause to fall or strike, at, against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than †three years—or to be imprisoned for any term not exceeding two years, with or without hard labour.

Casting stone,
&c. upon a
railway car-
riage with
intent to
endanger the
safety of any
person
therein.

† [Five.]

**24 & 25
Vict. c. 100,
s. 34.**

Doing or
omitting
anything to
endanger
passengers by
railway.

34. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour.

See L. J., Aug. 14, 1880, p. 393.

THE HARBOURS TRANSFER ACT, 1862.

25 & 26 VICT. c. 69.

An Act for transferring from the Admiralty to the Board of Trade certain Powers and Duties relative to Harbours and Navigation under Local and other Acts; and for other Purposes. 25 & 26
Vict. c. 69,
ss. 1, 2, 6.
[29th July, 1862.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as The Harbours Transfer Act, 1862. Short title.

2. In this Act—

The term "the Admiralty" shall be taken to mean the lord high admiral of the United Kingdom for the time being, or the commissioners for the time being for executing the office of lord high admiral; and when the said term is used in reference to any other Act, it shall be taken to comprise any term whatsoever used in such other Act to designate such lord high admiral or commissioners :

Interpretation
of terms.

The term "the Board of Trade" shall be taken to mean the lords of the committee of privy council for the time being appointed for the consideration of matters relating to trade and foreign plantations.

Railways Clauses Consolidation Acts, 1845.

6. With respect to any special Act that may be passed after the end of the present session of Parliament, sections seventeen of the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, respectively, and all provisions relative thereto in the said Acts or in any such future special Act contained, shall be read and construed as if the Board of Trade were named in the said sections instead of the Admiralty.

Consent and
approval of
Board of
Trade to rail-
way works on
tidal lands.

25 & 26
 Vict. c. 69,
 s. 8.

Special Acts for Railways, Harbours, &c.

Powers for
 protection of
 navigation,
 &c. under
 local Acts for
 harbours, rail-
 ways, and
 other works
 on tidal lands,
 &c. to be
 exercised by
 Board of
 Trade.

8. Where any special or local or local and personal Act, or Act of a local or local and personal nature, already passed or to be passed before the end of the present session of Parliament,—

- (1.) Authorizing or regulating the construction of a railway, or the execution of any work whatever, situate on or affecting tidal lands, or the shore of the sea or of any navigable river, where and so far up the same as the tide flows and reflows; or,
- (2.) Authorizing or regulating the construction or improving of a harbour, dock, or pier, or works connected therewith, by any company, body corporate, commissioners, trustees, undertakers, persons or person; or,
- (3.) Constituting or altering or regulating the constitution of any harbour or conservancy authority; or,
- (4.) Altering or regulating the powers or duties of any harbour or conservancy authority,—

contains either expressly or by incorporation or reference or otherwise any provision for any of the purposes following:—

For preventing the construction or execution of any work or the doing of any thing without the consent or approval of the Admiralty, or for authorizing or requiring any work to be constructed, executed, or maintained, or any thing to be done with the consent or on the requisition or to the satisfaction of the Admiralty:

For empowering the Admiralty to exercise any authority concerning lifeboats, mortars, rockets, tide gauges, or barometers to be provided by any undertakers:

For empowering the Admiralty to make a local survey or examination at the expense of any company, body, or person:

For empowering the Admiralty, in case of any work being abandoned or suffered to fall into disuse or decay, or in any other case, to abate, remove, or alter any work or any part of it, or restore the site thereof to its former condition, at the like expense:

For empowering the Admiralty to exercise any authority concerning lights to be maintained at night during the construction or execution of any work:

For empowering the Admiralty or the First Lord of the Admiralty to nominate or appoint a member or members of any board or body of trustees, commissioners, or conservators, or of any harbour or conservancy authority:

For empowering the Admiralty to determine any dispute or difference between or among any bodies or persons:

For empowering the Admiralty or the First Lord of the Admiralty to nominate or appoint any arbitrator, referee, or umpire, or any engineer, inspector, or officer, or any person to fill any place or discharge any duty under such Act:

or any other provision for the protection, management, or regula-

tion of harbours or navigation, or for the exercise of any control or power over or in relation to any harbour authority, or any other provision in any wise relating to conservancy, or authorising or requiring any act or thing concerning harbours or navigation or conservancy to be done by or in relation to the Admiralty,—

25 & 26
 Vict. c. 69,
 s. 9.

Then from and after the thirty-first day of December one thousand eight hundred and sixty-two, such Acts and all enactments relative thereto shall be read and construed as if in the respective provisions aforesaid the Board of Trade were named instead of the Admiralty, and the president of the Board of Trade instead of the First Lord of the Admiralty.

9. Provided always, that where it appears to the Admiralty that the interests of her Majesty's naval service require that the whole or any part of any harbour, port, bay, estuary, or navigable river in, on, or adjoining to which there is or shall be any of her Majesty's dockyards, victualling yards, steam factory yards, arsenals, or naval stations, should be excepted, either entirely or in some respects, out of the operation of the last foregoing section, the Admiralty may give notice in writing to the Board of Trade that any such harbour, port, bay, estuary, or navigable river as aforesaid, or such part thereof as is in the notice specified, is to be deemed so excepted, either entirely or in the respects therein mentioned; and every such notice shall be published by the Admiralty in the *London, Edinburgh, or Dublin Gazette* (according as the place affected may be in England, Scotland, or Ireland), and thereupon the harbour, port, bay, estuary, or navigable river to which such notice relates, or the part thereof therein specified, shall, either entirely or in the respects therein mentioned, as the case may require, be and remain as if this Act had not been passed, but any such notice may be from time to time varied or at any time revoked by a like notice published in like manner.

Power to
 Admiralty to
 retain autho-
 rity over
 ports, &c.
 where dock-
 yards, &c.
 are situate.

METROPOLIS LOCAL MANAGEMENT ACT, 1862.

25 & 26 VICT. c. 102.

**25 & 26
Vict. c. 102,
ss. 34, 35.**

An Act to amend the Metropolis Local Management Acts.
[7th August, 1862.]

Plan, &c. of
works affect-
ing railways
or canals to be
submitted to
companies.

34. WHERE any works authorised by this or the recited Acts will interfere with any railway or canal, the board or vestry proposing to construct such works shall before commencing the same give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice, deliver a plan and section showing the nature of such interference; and if within seven days after the receipt of such notice the company shall by writing, addressed to the board or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively, on account of the probable interruption or endangering of the traffic thereon, the same works shall not be commenced; and it shall thereupon be referred to an engineer, to be appointed by the Board of Trade, on the application of either party, to determine the manner of executing the said works, and the determination come to by such engineer shall be binding on both parties.

Line of rail-
way not to be
altered.

35. Provided always, that it shall not be lawful for any board or vestry to alter the level of any railway or canal, unless with the consent of the company owning the same respectively, or, if that be refused, with the consent of the Board of Trade; and provided also, that nothing in this Act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting of any land or property of such company, or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs, or expenses which such company may be required to pay in consequence of such interruption.

INLAND REVENUE ACT, 1863.

26 & 27 VICT. c. 33.

An Act for granting to Her Majesty certain Duties of Inland Revenue; and to amend the Laws relating to the Inland Revenue.
[29th June, 1863.]

26 & 27
Vict. c. 33,
ss. 13, 14.

13. WHEREAS by the fourth section of the Act passed in the fifth and sixth years of Her Majesty's reign, chapter seventy-nine, the proprietor or company of proprietors of every railway in Great Britain, and other persons therein named, are required to keep and render certain accounts as therein mentioned, and it is expedient to alter the period for which such accounts are directed to be made up, and the time of delivering the same: Be it enacted, that the proprietor or company of proprietors of every railway in Great Britain, and the persons required by law to keep such accounts as aforesaid, shall deliver to the Commissioners of Inland Revenue or to the proper officer appointed for receiving the same, within twenty days after the termination of every calendar month, a true copy or true copies of the accounts of all sums of money received or charged and paid or accounted for, as in the said Act is mentioned, during the whole of the calendar month last preceding; and all the provisions and regulations contained in the said Act with regard to the accounts therein directed to be rendered, and all bonds and securities entered into or given or to be entered into or given with relation thereto, shall apply, continue, and be in force as well with respect to any surety as to the principal in any such bond, and to the accounts to be kept and rendered at the time and in the manner by this Act directed, and the duties payable in respect thereof.

Accounts of sums received for the conveyance of passengers upon railways to be made up at the close of each calendar month.

14. The exemption from duty granted by the ninth section of the Act passed in the seventh and eight years of Her Majesty's reign, chapter eighty-five, in respect of the conveyance of passengers by cheap trains shall not extend to any railway train which shall not be a train running on at least six days of the week, or else a train running to or from a market town on a market day, and approved of by the Lords of the Committee of Privy Council for Trade and Plantations as a cheap train for the conveyance of passengers to or from market, or a train approved by the said Lords of the Committee of Privy Council as an ordinary train of the railway travelling on Sunday, and conveying third-class passengers at fares not exceeding one penny per mile.

Restriction on exemption from duty on railway passengers granted by sect. 9 of 7 & 8 Vict. c. 85.
[Rep. except as to Ireland by 46 & 47 Vict. c. 34.]

THE RAILWAYS CLAUSES ACT, 1863.

26 & 27 VICT. c. 92.

26 & 27
 Vict. c. 92,
 ss. 1, 2.

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to Railways.

[28th July, 1863.]

WHEREAS The Railways Clauses Consolidation Act, 1845, and The Railways Clauses Consolidation (Scotland) Act, 1845, respectively, were passed in order to comprise in one general Act such provisions relating to railways in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament authorising the construction of railways :

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to railways, and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to railways, as for ensuring greater uniformity in the provisions themselves :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as The Railways Clauses Act, 1863.

Division of
 Act into
 parts.

2. This Act shall be deemed to be divided into five parts, as follows :—

- Part I. relating to construction of a railway ;
- Part II. relating to extension of time ;
- Part III. relating to working agreements ;
- Part IV. relating to steam vessels ;
- Part V. relating to amalgamation.

PART I.

CONSTRUCTION OF A RAILWAY.

26 & 27
Vict. c. 92,
ss. 3—5.

3. This part of this Act shall apply to the railway authorised to be constructed by any special Act hereafter passed and incorporating this Part of this Act.

Application
of Part I.,
and interpre-
tation of
terms.

In this Part of this Act—

All terms used have the same meanings as the same terms have when used in The Railways Clauses Consolidation Act, 1845, and The Railways Clauses Consolidation (Scotland) Act, 1845, respectively :

The term “tidal river” means any part of a river within the flow and ebb of the tide at ordinary spring tides :

The term “tidal water” means any part of the sea or any part of a river within the flow and ebb of the tide at ordinary spring tides :

The term “tidal lands” means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides.

The provisions respecting the recovery of penalties contained in the said Railways Clauses Consolidation Acts, respectively, as the case may require, shall be incorporated with this Part of this Act.

Alteration of Engineering Works.

4. Notwithstanding anything in the said Railways Clauses Consolidation Acts, respectively, contained,—the company, in the construction of the railway, may deviate from the line or level of any arch, tunnel, or viaduct, described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in sections eleven, twelve, and fifteen of those Acts respectively, and so as the nature of the work described be not altered,—and may also substitute any engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon ; provided that every such substitution be authorised by a certificate of the Board of Trade ; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith, and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby.

Power to alter
engineering
works.

Provided, that nothing in the present section shall affect any power given to the company or to the Board of Trade by sections eleven, twelve, fourteen, or fifteen of the last-mentioned Acts respectively.

Level Crossings.

5. Where the company is authorised by the special Act to carry the railway across a turnpike road or public carriage road on a level, it shall not be lawful for the company in shunting trains to

Trains not to
be shunted
over level
crossings.

26 & 27
 Vict. c. 92,
 ss. 6-8.

Company to
 erect lodge at
 point of
 crossing.

pass any train over the level crossing, or at any time to allow any train, engine, carriage or truck to stand across the same.

6. For the greater convenience and security of the public, the company shall erect and permanently maintain a lodge at the point where the railway crosses on the level the turnpike road or public carriage road; and the company shall be subject to and shall abide by all such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade.

If the company fails to erect, or to maintain, such lodge, or to appoint or keep a proper person to watch or superintend the level crossing, or to observe or abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, and also to a penalty of ten pounds for every day during which the offence continues after the penalty of twenty pounds is incurred.

See *Williams v. Gl. W. Ry. Co.*, L. R. 9 Ex. 157.

Board of
 Trade may
 require bridge
 instead of
 level crossing.

7. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special Act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriage road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do.

A *mandamus* will not lie to compel a railway company to construct a bridge in lieu of a level crossing, pursuant to an order of the Board of Trade, where the company is wholly without funds, and have not the means of raising the money necessary for the purpose (*In re Bristol and N. Somerset Ry. Co.*, 47 L. J. Q. B. 48; 3 Q. B. D. 10).

Power to
 company to
 take addi-
 tional land
 for such work.

8. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use, all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work; and the Board of Trade before issuing the certificate shall cause at least three months' notice to be given to any person who may be entitled to claim under the last-mentioned Acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work.

Junctions.

26 & 27
Vict. c. 92,
ss. 9—12.

9. Where the company is authorised by the special Act to make a junction between the railway and any other railway, then and in every such case all interferences with the works of the other railway, necessary or convenient for effecting the junction, shall be made under the superintendence and to the reasonable satisfaction of the engineer for the time being of the company or person to whom the other railway belongs; and in case of any difference arising as to the mode of effecting the junction, the same shall be determined by a referee to be appointed by the Board of Trade, on the application of either party, at the cost of the company making the junction.

Communications with other railways to be made under the direction of the engineer of those railways.

Under an Act empowering one company to make a junction with another company, and directing the latter company to afford facilities for effecting the junction, it was held that the company making the junction was entitled, after its compulsory powers had expired, to pass over a piece of land belonging to the other company in order to effect the junction (*Gl. N. Ry. Co. v. E. & W. India Docks & Birmingham Junction Ry. Co.*, 7 R. C. 357. See, too, *Bristol & N. Somerset Ry. Co. v. Somerset & Dorset Ry. Co.*, 22 W. R. 399, 601).

10. With respect to any lands belonging to the company or person to whom the other railway belongs, which the company are by the special Act authorised to use, enter upon, or interfere with, for the purposes of the junction, the company shall not, except by agreement, or unless otherwise provided in the special Act, purchase and take the same, but the company may purchase and take, and such other railway company or person may and shall sell and grant accordingly, an easement or right of using the same for the purposes of the junction.

Company to acquire only easements in land of other railway company.

To enable a company to take lands actually used by a second company, there must be clear and express powers (*Dublin & Drogheda Ry. Co. v. Navan & Kingscourt Ry. Co.*, 1 R. 5 Eq. 393).

11. Nothing relative to the junction in this Act contained shall be deemed to authorise the company for the purposes of the junction to take or enter upon any lands belonging to the company or person to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, as shown on the deposited plans and sections of the railway to which the special Act relates, without the previous consent in writing in every instance of such other railway company or such person.

Not to take lands or interfere with works of other company further than necessary.

12. The company or person with whose railway the junction is made may from time to time erect such signals and conveniences incident to the junction, either on their or his own lands or on the lands of the company making the junction, and may from time to time appoint and remove such watchmen, switchmen, or other persons as may be necessary for the prevention of danger to, or interference with, the traffic at and near the junction. The working and management of such signals and conveniences, wherever

As to expense of signals, watchmen, &c.

26 & 27
 Vict. c. 92,
 ss. 13—15.

situate, shall be under the exclusive regulation of the company or person with whose railway the junction is made; and all the expenses of erecting and maintaining those signals and conveniences, and of employing those watchmen, switchmen, and other persons, and all incidental current expenses, shall, at the end of every half year, be repaid by the company making the junction, and in default thereof may be recovered from them in any Court of competent jurisdiction.

To sustain an action for expenses incurred under this section, there must be proof that the expenses have been actually paid (*Caermarthen & Cardigan Ry. Co. v. Manchester & Milford Ry. Co.*, L. R. 8 C. P. 685; 42 L. J. C. P. 262).

Protection of Navigation.

Lights on
 works.

13. Where the company is authorised by the special Act to construct, alter, or extend any work on, in, over, through, or across tidal lands or a tidal water, the company shall, on or near the work, during the whole time of the constructing, altering, or extending thereof, exhibit and keep burning at their own expense, every night from sunset to sunrise, such lights (if any) as the Board of Trade from time to time requires or approves; and (notwithstanding the enactments for the time being in force respecting lighthouses) shall also on or near the work, when completed, always maintain, exhibit, and keep burning, at their own expense, every night from sunset to sunrise, such lights (if any) for the guidance of ships as the Board of Trade from time to time requires or approves.

If the company fails to comply in any respect with the provisions of the present section, they shall for each night in which they so fail be liable to a penalty not exceeding twenty pounds.

Construction
 of bridges.

14. Where the company is authorised or required by the special Act to construct a bridge over a navigable tidal water, and the special Act does not make express provision respecting the span or spans thereof, then the company shall construct the same with a span or spans of such headway and waterway, and with such opening span or spans (if any), and according to such plan, as the Board of Trade directs or approves.

User of
 bridges.

15. Where the company constructs a bridge with an opening span, it shall not be lawful for the company to detain any vessel, barge, or boat at the bridge for a longer time than may be necessary for admitting a carriage or engine traversing the railway and approaching the bridge to cross the bridge, and for opening the bridge to admit the vessel, barge, or boat to pass; and the company shall be subject to and shall abide by such regulations with regard to the user of the bridge as may from time to time be made by the Board of Trade.

If the company detains a vessel, barge, or boat longer than the time aforesaid, or fails in any respect to abide by any such regulation as aforesaid, they shall for every such offence be liable to a

penalty not exceeding twenty pounds, without prejudice to any remedy against them for any loss or damage sustained by any person.

26 & 27
Vict. c. 92,
ss. 16, 17.

Under this section the company are not bound to open a bridge for vessels with masts which can be lowered (*West Lanc. Ry. Co. v. Iddon*, 49 L. T. 600).

16. Where the railway cuts off access between the land and a tidal water or tidal lands, then and in every such case the company shall, during the construction of the railway, and from time to time thereafter, make, and shall permanently maintain, and allow to be used by all persons, at all times, free of toll or other charge, all such footways and carriageways over, under, or across the railway, or on a level therewith, as the Board of Trade from time to time directs or approves: Provided always, as follows:

Access to the shore under or across the railway.

- (1.) The company shall not be obliged to make a footway or carriageway over lands for the use of an owner or occupier who has agreed to receive and has been paid compensation for the severance thereof from the tidal water or tidal lands:
- (2.) The company shall not be obliged to make or to allow to be made a footway or carriageway in such manner as would interfere with the working or using of the railway:
- (3.) The expense of the making and maintenance of a footway or carriageway required to be made after the construction of the railway shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

Where the footway or carriageway is made across the railway on the level, then the manner of the making and watching of the level crossing shall be subject to the approval of the Board of Trade; and where the level crossing is made after the construction of the railway, then all expenses attending the watching thereof shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

17. Where the company is authorized by the special Act to construct a railway skirting a public navigable tidal river or channel, the company shall not make any deviation of the railway from the continuous centre line thereof marked on the plan deposited by them at the Board of Trade, even within the limits of deviation shown on that plan, in such manner as to diminish the navigable space, without the previous consent of the Board of Trade or otherwise than in such manner as is expressly authorised by the Board of Trade.

Prohibition of deviation of certain works without consent of Board of Trade.

If any deviation is made in contravention of the present section, the Board of Trade may abate and remove the work in the construction whereof the deviation is made, or any part thereof, and restore the site thereof to its former condition, at the expense of the company; and the amount of such expense shall be a debt due

**26 & 27
Vict. c. 92,
ss. 18—21.**

from the company to the crown, and be recoverable accordingly with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

Abatement of
work abandoned or
decayed.

18. If a work constructed by the company on, in, over, through, or across tidal lands or a tidal water is abandoned, or suffered to fall into decay, the Board of Trade may abate and remove the work, or any part of it, and restore the site thereof to its former condition, at the expense of the company; and the amount of such expense shall be a debt due from the company to the crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

Survey of
works by
Board of
Trade.

19. If at any time the Board of Trade deems it expedient, for the purposes of the special Act or of this part of this Act, to order a survey and examination of a work constructed by the company on, in, over, through, or across tidal lands or tidal water, or of the intended site of any such work, the company shall defray the expense of the survey and examination; and the amount thereof shall be a debt due from the company to the crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

PART II.

EXTENSION OF TIME.

Parties ag-
grieved by
extension of
time may
have compen-
sation for
additional
damage.

20. Where a railway is authorised to be constructed by a special Act passed either before or after the passing of this Act, and the time limited by the special Act for the exercise of powers of compulsory purchase of lands, or of powers for construction of the railway and works, is extended by a special Act hereafter passed and incorporating this part of this Act,—then and in every such case the justices, arbitrators, umpires, or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and assess compensation for, the additional damage (if any) sustained by those owners, occupiers, or other persons, by reason of the extension of time.

Existing
contracts and
notices to
take lands not
to be affected.

21. The extension of time shall not affect any contract entered into or notice given by the company before the passing of the special Act granting the extension, for purchasing, taking, or using any lands which the company was entitled to purchase, take, or use; but every such contract and notice shall be construed and

take effect, and the same proceedings may be had thereunder, and all parties thereto shall be entitled to the same rights and remedies in respect thereof, at law and in equity, as if the extension had not been granted.

26 & 27
Vict. c. 92,
ss. 22, 23.

PART III.

WORKING AGREEMENTS.

22. Where two or more companies are authorised by a special Act hereafter passed and incorporating this part of this Act, to agree among themselves with respect to all or any of the following purposes; namely,—

Restrictions
on agreements
between com-
panies.

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them;

[See 27 & 28
Vict. c. 120,
s. 3. By
36 & 37 Vict.
c. 48, s. 10,
the powers of
Board of
Trade under
Part III.

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising, in respect of traffic;—

are trans-
ferred to the
railway com-
missioners.]

then and in every such case the authority so to agree, or the agreement when entered into, shall not in any manner affect any of the tolls, rates, or charges which the companies parties thereto are from time to time respectively authorised to demand and receive from any person or from any other company; but all such persons and companies shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies, parties to the agreement, on the same terms and conditions, and on payment of the same tolls, rates, and charges, as they would be if such authority had not been given or the agreement had not been entered into.

23. The agreement shall not, save so far as its terms and conditions are authorised by The Railways Clauses Consolidation Act, 1845, or by The Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, or by any other general statute or law from time to time in force with respect to the companies parties to the agreement, have any operation unless and until it is sanctioned by such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the several companies parties thereto, present (personally or by proxy) at a general meeting of each company specially convened for the purpose (in manner hereinafter mentioned), as is prescribed in the special Act, and if no proportion is prescribed, then by three-fifths of such votes.

Sanction of
shareholders
to agree-
ments.

Every such meeting shall be convened by circular addressed to each such shareholder and stockholder, and served in the manner

26 & 27
 Vict. c. 92,
 ss. 24—26.

prescribed by The Companies Clauses Consolidation Act, 1845, or The Companies Clauses Consolidation (Scotland) Act, 1845, as the case may require, with respect to notices requiring to be served by the company upon the shareholders, and also by advertisement inserted once at least in each of two consecutive weeks in some newspaper published or circulating in the county prescribed in the special Act, and if no county is prescribed, then in the county in which the head office of the company is situate, the last of such advertisements to be published not less than seven days before the meeting.

Public notice
 of intention to
 enter into
 such agree-
 ment.

24. Before the companies enter into the agreement notice of their intention to do so shall be given by them or one of them, in a form to be approved by the Board of Trade, inserted once at least in each of three successive weeks in some newspaper published or circulating in the county prescribed in the special Act, and if no county is prescribed, then in the county or one of the counties in which each railway to the maintenance, management, use, or working whereof the proposed agreement relates, or some portion of that railway, is situate; and the notice shall set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade.

The directions of the railway commissioners relating to working agreements will be found printed at the end of this Act.

Approval of
 Board of
 Trade.

25. The agreement shall not have any operation until it is approved by the Board of Trade; and the Board of Trade shall not approve the agreement without being satisfied of its having received such sanction of meetings of the respective companies as aforesaid.

Except on some substantial objection to a working agreement, the commissioners will not refuse to approve it, when the railway company may, perhaps, in consequence, lose the opportunity of being able to complete their railway within the time limited by the Act; the fact that the company who under the agreement are to work the line are unable to pay a dividend on their capital or with their existing resources to keep their own line in proper repair, is not a sufficient ground for such refusal where they have advantages (such as a line adjoining the line agreed to be worked) over any other company who could compete for the working of the line (*In re W. Cork & Ilen Valley Ry. Cos.*, 2 N. & Mac. 334).

It would seem, however, that an article in a working agreement entitling the working company to transfer the right to work the line to another company at some future time will not be approved (*ibid.* See also *Sirhowy Ry. Co. & L. & N. W. Ry. Co.*, 2 Nev. & Mac. 264, where the railway commissioners approved an agreement subject to certain conditions).

The directions of the railway commissioners relating to working agreements between two or more railway companies will be found in an appendix to this Act.

Joint com-
 mittee for
 purposes of
 agreements.

26. The companies parties to the agreement may, in accordance therewith and for the purposes thereof, appoint a joint committee, composed of such number of the directors of each company as the companies think proper, and from time to time may vary and renew the joint committee as occasion requires, and may regulate the proceedings of the joint committee, and may delegate to the

joint committee all such of the powers of the companies as the companies think necessary for carrying into effect the purposes of the agreement; and the joint committee shall have and may exercise the powers so from time to time delegated to them in like manner as the same powers might be had and exercised by the companies respectively or their respective directors.

26 & 27
Vict. c. 92,
ss. 27—30.

27. At the expiration of the first or any subsequent period of ten years after the making of the agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised; and the Board of Trade may require the companies parties thereto to publish such notices of any intended revision of the agreement as the Board of Trade may direct; and the Board of Trade may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare the modification to be part of the agreement, and the same shall be read and take effect accordingly.

Agreements
between com-
panies may be
modified by
Board of
Trade.

Where a working agreement under a special Act provided that the Board of Trade should have power once in every ten years to revise the agreement, it was held that by virtue of the Regulation of Railways Act, 1873, s. 10, the Railway Commissioners could revise the agreement (*Corp. of Huddersfield v. G. N. Ry. Co.*, 50 L. J. Q. B. 587).

28. Where a company is authorised by a special Act hereafter passed, and incorporating this part of this Act, to agree with a person being the proprietor of a railway with respect to all or any of the purposes specified in this part of this Act, then and in every such case the provisions of this part of this Act shall apply, *mutatis mutandis*, to the company in relation to such authority and to the agreement entered into by virtue thereof.

Working
agreements
between a
company and
an individual.

29. For the purposes of this part of this Act, any alteration of an agreement by the parties thereto shall be deemed an agreement.

Alteration of
agreement.

PART IV.

STEAM VESSELS.

30. Where a railway company incorporated either before or after the passing of this Act, is authorised by a special Act hereafter passed and incorporating this part of this Act, to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels,—then and in every such case, tolls shall be at all times charged to all persons equally, and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like

Provision for
securing
equality of
treatment.

[See Regula-
tion of Rail-
ways Act,
1868, s. 16,
and Regula-
tion of Rail-
ways Act,
1873, s. 11,
post.]

**26 & 27
Vict. c. 92,
ss. 31—34.**

circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof; or in favour of or against any person using the railway in consequence of his having used or being about to use or his not having used or not being about to use the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel, and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

**Application of
Railway and
Canal Traffic
Act.**

31. The provisions of The Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels, and to the traffic carried on thereby.

See the notes to the Railway and Canal Traffic Act, 1854, ss. 2 and 7, *ante*.

**Company
empowered to
make byelaws
for regulating
steam vessels.**

32. The company may from time to time make byelaws in relation to passengers, animals, and goods conveyed in or upon the steam vessels, and as to the embarkation and disembarkation thereof respectively, and may enforce the observance of the same by penalties, in the same manner as they may with respect to passengers, animals, and goods conveyed upon their railway; such byelaws to be sanctioned and authenticated in the same manner as is required by any special or other Act with respect to byelaws relating to the company's railway, and being published by being painted on boards, or printed on paper and pasted on boards, and hung up or affixed and continued on some conspicuous part of every steam vessel and landing-place of the company; and such byelaws, and all penalties in respect of the breach thereof, shall be enforced and recovered in the same manner as is provided with respect to byelaws relating to the company's railway, and to penalties in respect to the breach thereof.

**Recovery of
money by
distress.**

33. All tolls and charges for the steam vessels due and payable to the company on any account whatsoever, and all costs, damages, and expenses by the special Act directed to be paid in respect of the steam vessels, may be levied by distress; and in England or Ireland any justice, and in Scotland the sheriff, may, on application by or on behalf of the company, issue his warrant accordingly.

The justice or sheriff who issues the warrant of distress may order that the costs of the proceedings for the recovery of the toll or sum shall be paid by the person liable to pay the toll or sum, and the costs shall be ascertained by the justice or sheriff, and shall be included in the warrant of distress for the recovery of the toll or sum.

**Several names
in one war-
rant.**

34. Any number of names and sums may be included in any warrant of distress or notice obtained or given by the company for any of the purposes of this part of this Act, or of the provisions of

the special Act with respect to the steam vessels, and may be stated either in the body of the warrant or notice, or in a schedule thereto.

26 & 27
Vict. c. 92,
ss. 35—37.

35. In every seventh year after the passing of the special Act, reckoned from the first day of January next after its passing, the Board of Trade, if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the company relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded, and if the company does not before the beginning of the then next session of Parliament, make provision to the satisfaction of the Board of Trade for protection of the interests of the public, or if the injury done to the interests of the public is in the opinion of the Board of Trade incapable of being remedied by the company, then the Board of Trade at the beginning of the session of Parliament then next following, shall report to both Houses of Parliament such their opinion, and the reasons on which that opinion is founded, and at the expiration of twelve calendar months after the presentation to the Houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the meantime otherwise provides, cease to be exercised.

Provision for
cesser of
powers as to
steam vessels,
on report
from Board of
Trade.

[Powers
under this
section trans-
ferred to
railway com-
missioners by
36 & 37 Vict.
c. 48, s. 10.]

PART V.

AMALGAMATION.

36. This part of this Act shall apply where two or more railway companies, respectively incorporated either before or after the passing of this Act, are amalgamated by a special Act hereafter passed and incorporating this part of this Act.

Application of
Part V.

This part of the Act, it would seem, has reference only to cases where one or both of the companies has been dissolved to all intents and purposes (*Smith v. Edinburgh & Glasgow Ry. Co.*, 3 Feb. 1866, 4 Macp. 361).

37. For the purposes of this part of this Act, companies shall be deemed amalgamated by a special Act, in either of the following cases :

Definition of
cases of
amalgama-
tion.

- (1.) Where by the special Act two or more companies are dissolved, and the members thereof respectively are united into and incorporated as a new company :
- (2.) Where by the special Act a company or companies is or are dissolved, and the undertaking or undertakings of the dissolved company or companies is or are transferred to another existing company, with or without a change in the name of that company :

And in this part of this Act, such special Act is referred to as the amalgamating Act ; the company incorporated or continued by or

26 & 27
Vict. c. 92,
ss. 38—40.

under the amalgamating Act is referred to as the amalgamated company; and the time prescribed in the amalgamating Act for the amalgamation taking effect, and if no time is prescribed, then the time of the passing of the amalgamating Act, is referred to as the time of amalgamation.

Undertakings
of dissolved
companies
vested in
amalgamated
company.

38. In every case of amalgamation, the undertaking, railways, harbours, navigations, ferries, wharfs, canals, works, real and personal property, powers, authorities, privileges, exemptions, rights of action and suit, and all other the rights and interests of the dissolved company, shall, subject to the contracts, obligations, debts, and liabilities of that company, become at the time of amalgamation, and by virtue of the amalgamating Act, vested in the amalgamated company, and may and shall be held, used, exercised, and enjoyed by the amalgamated company in the same manner and to the same extent as the same respectively at the time of amalgamation are, or if the amalgamating Act were not passed might be, held, used, exercised, and enjoyed by the dissolved company.

The amalgamated company may carry on actions instituted by the dissolved company without any order or suggestion on the record (*West Hartlepool Harbour & Ry. Co. v. Jackson*, 36 L. J. Ch. 189).

Acts relating
to dissolved
companies to
apply to
amalgamated
company.

39. The special Acts relating to or affecting the dissolved company or their undertaking in force at the passing of the amalgamating Act, shall, except so far as they are thereby expressed to be varied or repealed, remain in full force; and all rights and powers thereby conferred on and vested in the dissolved company in relation to their undertaking may be enjoyed and exercised by the amalgamated company in relation to the dissolved undertaking; and all matters to be done, continued, or completed, or which but for the amalgamation would, might, or could be done, continued, or completed, by the dissolved company, or their directors, officers, or servants, under or by virtue of those Acts, shall or may be done, continued, or completed by the amalgamated company, and their directors, officers, and servants, as the case may be; and every special Act, so far as it relates to or affects the dissolved company or their undertaking, shall be read and construed as if the name of the amalgamated company had been used therein in relation to that undertaking instead of the name of the dissolved company.

Saving debts
and claims of
dissolved
companies.

40. Except as may be otherwise provided in the special Act, all debts and money due from or to the dissolved company, or any persons on their behalf, shall be payable and paid by or to the amalgamated company; and all tolls, rates, duties and money due or payable by virtue of any Act relating to the dissolved company from or to that company shall be due and payable from or to the amalgamated company, and shall be recoverable from or by the amalgamated company by the same ways and means, and subject to the same conditions, as the same would or might have been

recoverable from or by the dissolved company if the amalgamating Act had not been passed.

26 & 27
Vict. c. 92,
ss. 41-44.

41. All deeds, conveyances, grants, assignments, leases, purchases, sales, mortgages, bonds, covenants, agreements, contracts, and securities which before the amalgamation have been executed, made, or entered into by, with, to or in relation to the dissolved company, or the directors thereof, and which are in force at the time of amalgamation, and all obligations and liabilities which before the amalgamation have been incurred by or to, or which but for the amalgamation might or would have arisen in relation to, the dissolved company, or the directors thereof, shall be as valid and of as full force and effect in favour of, against, or in relation to the amalgamated company as if the same had been executed, made, or entered into by, with, or to, or in relation to, or had been incurred by or to or had arisen in relation to, the amalgamated company by name.

Saving conveyances, contracts, &c.

42. All causes and rights of action or suit accrued before the time of amalgamation, and then in any manner enforceable by, for, or against the dissolved company shall be and remain as good, valid, and effectual for or against the amalgamated company as they would or might have been for or against the dissolved company affected thereby, if the amalgamating Act had not been passed.

Causes and rights of action reserved.

43. Nothing in the amalgamating Act or in this part of this Act shall cause the abatement, discontinuance, or determination of or in anywise prejudicially affect any action, suit, or other proceeding at law or in equity commenced by or against the dissolved company, either solely or jointly with any other company, or with any person, before the time of amalgamation, and then pending; but the same may be continued, prosecuted, or enforced by or against the amalgamated company, either solely, or as the case may require, jointly with such other company or with such person; and all persons committing offences against any of the provisions of any special Act relating to the dissolved company before the amalgamation may be prosecuted, and all penalties incurred by reason of such offences may be sued for and recovered, in like manner in all respects as if the amalgamating Act had not been passed,—the amalgamated company being in respect of all such matters considered as identical with the dissolved company.

Actions not to abate.

44. No submission to arbitration of any matter in dispute between the dissolved company and any other company or any person, under which any reference is pending and incomplete at the time of amalgamation, and no award theretofore made and then remaining in force, shall be revoked or prejudicially affected by anything in the amalgamating Act or in this part of this Act contained; but every such submission and award shall be as valid

Saving submissions and awards relating to dissolved companies.

36 & 37
 Vict. c. 92,
 ss. 45—48.

Unexecuted
 works of
 dissolved
 companies
 may be com-
 pleted.

and effectual for or against the amalgamated company as it would have been for or against the dissolved company.

45. All works which the dissolved company is at the time of amalgamation authorised or bound to execute and complete, and which are not then executed or completed, may or shall (as the case may require) be executed or completed by the amalgamated company, and for that purpose the amalgamated company shall have and be subject to all the powers, rights, and conditions which were conferred or imposed upon the dissolved company, and which but for the passing of the amalgamating Act might have been exercised by or enforced against the dissolved company.

Contracts for
 land entered
 into by dis-
 solved com-
 panies to be
 executed.

46. Where the dissolved company has under any special Act entered into any contract for the purchase of or taken or used any lands, which at the time of amalgamation have not been effectually conveyed to the dissolved company, or the purchase-money in respect of which has not been duly paid by the dissolved company, —then and in every such case the contract, if in force at the time of amalgamation, shall thereafter be completed by, and such lands shall be conveyed to, the amalgamated company, or as the amalgamated company directs, and the purchase-money shall be paid and applied pursuant to the special Acts relating to the dissolved company; and those Acts shall, in relation to the completion of the contract and the purchase and conveyance of the lands, and the payment and application of the purchase-money in respect thereof, be read and construed as if the amalgamated company were the company named in the Acts and contract.

Application of
 money paid
 into bank or
 to trustees.

47. Where any money has, before the time of amalgamation, been paid by the dissolved company, or is thereafter paid by the amalgamated company under any special Act relating to the dissolved company, into the Bank of England, or into one of the incorporated or chartered banks in Scotland, or into the Bank of Ireland, or to any trustee or trustees, on account of the purchase of any lands, or any interest therein, or for any compensation or satisfaction, or on any other account such money, or the stocks, funds, or securities in or upon which the same then is or thereafter may be invested by order of any Court, or otherwise, and the interest, dividends, and annual produce thereof, shall be applied and disposed of pursuant to such special Act; and that and every other Act shall, in relation to such money, stocks, funds, or securities, or the interest, dividends, or annual produce thereof, be read and construed as if the amalgamated company were the company therein named with reference to the same money, stocks, funds, securities, interest, dividends, or annual produce.

Officers of
 dissolved
 companies to
 be account-
 able for
 books, &c.

48. All officers and persons who, at the time of amalgamation, have in their possession or under their control any books, documents, papers, or effects belonging to the dissolved company, or to which the dissolved company would but for such dissolution have

been entitled, shall be liable to account for and deliver up the same to the amalgamated company, or to such persons as the amalgamated company may appoint to receive the same, in the same manner, and subject to the same consequences on refusal or neglect, as if such officers and persons had been appointed by and become possessed of such books, documents, papers, or effects for the amalgamated company.

26 & 27
Vict. c. 92,
ss. 49—53.

49. All clerks, officers, and servants who at the time of amalgamation are in the employment of the dissolved company, shall thereupon become clerks, officers, or servants, as the case may be, of the amalgamated company with the same rights, and subject to the same obligations and incidents in respect of such employment as they would have had or been subject to as the clerks, officers, or servants of the dissolved company, and shall so continue unless and until they respectively are duly removed from such employment by the amalgamated company, or until the terms of their employment are duly altered by the amalgamated company.

Officers of dissolved companies to be officers of amalgamated company.

50. All books and documents which would have been evidence in respect of any matter for or against the dissolved company shall be admitted as evidence in respect of the same or the like matter for or against the amalgamated company.

Books, &c. to be evidence.

51. All resolutions of any general meeting or board of directors of the dissolved company, or of any duly constituted and authorised committee thereof, so far as the same are applicable and remain in force, shall, notwithstanding the dissolution, continue to be operative, and shall apply to the amalgamated company, and to the directors, officers, and servants of the amalgamated company, until duly revoked or altered by the amalgamated company, or under their authority.

Resolutions of dissolved companies to remain in force.

52. All calls made by the dissolved company, and not paid at the time of amalgamation, shall be payable to and may be enforced by the amalgamated company, as if such calls had been made by the amalgamated company.

Payment of calls.

53. All registers of shares, stock, mortgages, and bonds of the dissolved company, and all registers of transfers thereof respectively, and all shareholders and stockholders address books, and all certificates of shares or stock of and in the dissolved company, which are valid and subsisting at the time of amalgamation, shall continue to be valid and subsisting, and shall have the same operation and effect as before the dissolution, unless and until new or altered registers, books, and certificates respectively are substituted in their stead; and all transfers, sales, or dispositions of stock or shares made before the dissolution and not then completed shall have the same operation and effect as if made after the dissolution.

Registers, books, and certificates relating to dissolved companies to subsist until replaced.

26 & 27
 Vict. c. 92,
 ss. 54, 55.

Byelaws to
 remain in
 force.

54. All the byelaws, rules, and regulations of the dissolved company relating to the management, use, or control of their undertaking shall, notwithstanding the dissolution, continue to be in force and applicable to and in respect of the undertaking, and shall and may be enforced by and available to the amalgamated company in their own name, as well for the recovery of penalties as for all other purposes, as if the same respectively had been originally made by the amalgamated company, until the expiration of twelve months after the time of amalgamation, or until other byelaws, rules, and regulations are duly made by the amalgamated company in their stead, whichever first happens.

General
 saving of
 rights and
 claims.

55. Notwithstanding the dissolution of the dissolved company, and the amalgamation, everything before the time of amalgamation done, suffered, and confirmed respectively, under or by virtue of any special Act relating to the dissolved company, shall be as valid as if the amalgamating Act had not been passed; and the dissolution and amalgamation, and the amalgamating Act, and this part of this Act, respectively, shall accordingly be subject and without prejudice to everything so done, suffered, and confirmed respectively, and to all rights, liabilities, claims, and demands, present or future, which if the dissolution and amalgamation had not taken place, and the amalgamating Act had not been passed, would be incident to or consequent on anything so done, suffered, and confirmed respectively; and with respect to all things so done, suffered, and confirmed respectively, and to all such rights, liabilities, claims, and demands, the amalgamated company shall to all intents represent the dissolved company; and the generality of this present provision shall not be deemed to be restricted by any other of the provisions of this part of this Act or by any provision of the amalgamating Act that does not expressly refer to this present provision, and expressly restrict the operation thereof.

DIRECTIONS OF THE RAILWAY COMMISSIONERS RELATING TO
WORKING AGREEMENTS BETWEEN TWO OR MORE
RAILWAY COMPANIES.

(Made in pursuance of The Regulation of Railways Act, 1873.)

1. Care should be taken that at least 28 days from the date of the newspaper containing the first insertion of the notice to the public of the intention of the companies to enter into a working agreement, are allowed for bringing objections before the railway commissioners.

2. At the expiration of the period specified in the notices for bringing objections before the railway commissioners, and together with the application for their approval, there should be sent to their office :

- (a.) The Act or Acts of Parliament authorising such agreement.
- (b.) Copies of the newspapers containing the notices of the intention of the two companies to enter into such agreement which are required by the 24th section of the Railway Clauses Act, 1863.
- (c.) Copies of the newspapers containing the advertisements of each company, required by the 23rd section of the same Act, convening the special meetings at which the agreement was assented to.
- (d.) A copy of the circular which was addressed to each shareholder.
- (e.) The agreement, sealed by the companies, together with a certificate given under the hands of the chairman at the meeting, and of the secretary of each company, stating that such agreement was duly assented to by the required proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a general meeting of each of the companies specially convened for that purpose, pursuant to the 23rd section of the same Act.

3. The application to the commissioners for their approval should be made in the manner prescribed by their general orders of August, 1873, Nos. 2, 6, and 13.

The agreement, when approved by the commissioners, will be returned with their approval signified thereon, and the copy lodged at their office will be retained by them.

These orders
will be found
printed after
36 & 37 Vict.
c. 48.

NOTE.—*Where the special Act or Acts authorising the agreement do not incorporate the Railways Clauses Act, 1863, Part 3, or are of an earlier date, the course of proceeding will be that indicated in the special Acts.*

REGULATION.

WHEREAS section 10 of the Regulation of Railways Act, 1873, transfers to the railway commissioners certain powers and duties of the Board of Trade under the Railway Clauses Act, 1863, and amongst others, the power of approving the form of notice to be given to the public by railway companies of their intention to enter into agreements amongst themselves under Part III. of the last-mentioned Act.

The form so approved by the commissioners is as follows:—

The Railway Company,
 and
The Railway Company.

NOTICE is hereby given pursuant to the provisions of the Railways Clauses Act, 1863, and the Regulation of Railways Act, 1873, and the 18 , that it is the intention of the Railway Company and the Railway Company to enter into an agreement for the following purposes, viz. (among other things) the

and that any company or person aggrieved by such proposed agreement and desiring to object thereto, may bring such objection before the Railway Commissioners, by sending the same in writing, addressed to the Railway Commissioners at their office, at the West Front Committee Rooms, House of Lords, Westminster, London, on or before the* day of 187 , in which office a copy of the proposed agreement can be seen.

Dated this day of 187 .

Secretary of the
(Solicitor or Agent)

* Twenty-eight days should intervene between the date of the newspaper containing the first insertion of this notice and the date here inserted.

THE TELEGRAPH ACT, 1863.

26 & 27 VICT. c. 112.

*An Act to regulate the Exercise of Powers under Special Acts
for the Construction and Maintenance of Telegraphs.*

[28th July, 1863.]

26 & 27
Vict. c. 112,
ss. 1, 3.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

[Amended by
29 Vict. c. 3.
Incorporated
with 31 & 32
c. 110.]

Preliminary.

1. This Act may be cited as the Telegraph Act, 1863.

Short title.

3. In this Act—

Interpreta-
tion of terms.

The term "the Company" means any company to be hereafter authorised as aforesaid (hereinafter distinguished by the term "future company"), or any company already so authorised (hereinafter distinguished by the term "existing company") :

The term "telegraph" means a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication :

The term "post" means a post, pole, standard, stay, strut, or other aboveground contrivance for carrying, suspending, or supporting a telegraph :

The term "work" includes telegraphs and posts :

The term "street" means a public way situate within a city, town, or village, or between lands continuously built upon on either side, and repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*, including the footpaths of such way, and any bridge forming part thereof :

The term "public road" means a public highway for carriages being repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*, and not being a street, including the footpaths of such public highway, and any bridge forming part thereof, and also any land by the side and forming part of such a public highway, but not including a railway or canal :

26 & 27
 Vict. c. 112,
 s. 6.

The term "railway" includes any station, work, or building connected with a railway :

The term "canal" includes navigation or navigable river, and any dock, basin, towing-path, wharf, work, or building connected with a canal :

The term "land" means land not being a street or public road, and not being land by the side and forming part of a public road, and includes land laid out for and proposed by the owner to be converted into a street or public road :

The term "body" includes a body of trustees or commissioners, municipal corporation, grand jury, board, vestry, company, or society, whether incorporated or not ; and any provision referring to a body applies to a person as the case may require :

The term "person" includes corporation aggregate or sole :

The term "the board of trade" means the lords of the committee of her Majesty's Privy Council for the time being appointed for the consideration of matters relating to trade and foreign plantations :

The term "justice" means justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises :

The term "two justices" means two or more justices met and acting together, or any one police magistrate or justice having by law authority to act alone for any purpose with the powers of two justices :

The term "sheriff" means the sheriff depute of the county or ward of a county in Scotland, and the steward depute of the stewartry in Scotland, in which the matter submitted to the cognizance of the sheriff arises, and includes the substitutes of such sheriff depute and steward depute respectively.

General Powers of Company.

General
 description of
 works which
 a telegraph
 company may
 execute, sub-
 ject to the
 restrictions of
 this Act.

6. Subject to the restrictions and provisions hereinafter contained, the company may execute works as follows :—

- (1.) They may place and maintain a telegraph under any street or public road, and may alter or remove the same :
- (2.) They may place and maintain a telegraph over, along, or across any street or public road, and place and maintain posts in or upon any street or public road, and may alter or remove the same :
- (3.) They may, for the purposes aforesaid, open or break up any street or public road, and alter the position thereunder of any pipe (not being a main) for the supply of water or gas :
- (4.) They may place and maintain a telegraph and posts under, in, upon, over, along, or across any land or building, or any railway or canal, or any estuary or branch of the sea, or the shore or bed of any tidal water, and may alter or remove the same :

Provided always, that the company shall not be deemed to acquire any right other than that of user only in the soil of any street or public road under, in, upon, over, along, or across which they place any work.

26 & 27
Vict. c. 112,
s. 32.

Restrictions as to Works affecting Railways and Canals.

32. The company shall not place any work under, in, upon, over, along, or across any railway or canal, except with the consent of the proprietors or lessees, or of the directors or persons having the control thereof. But this provision shall not restrict the company from placing any work (subject and according to the other provisions of this Act) under, in, upon, over, along, or across any street or public road, although such street or public road may cross or be crossed by a railway or canal, so that such work do not damage the railway or canal, or interfere with the use, alteration, or improvement thereof.

For works
affecting
railways,
canals, &c.,
consent of
directors, &c.,
requisite.

THE COMPANIES CLAUSES ACT, 1863.

26 & 27 VICT. c. 118.

26 & 27
 Vict. c. 118,
 ss. 1, 2.

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to the Constitution and Management of Companies incorporated for carrying on Undertakings of a public nature. [28th July, 1863.]

8 & 9 Vict.
 cc. 16 and 18.

WHEREAS The Companies Clauses Consolidation Act, 1845, and The Companies Clauses Consolidation (Scotland) Act, 1845, respectively, were passed in order to comprise in one general Act such provisions relating to the constitution and management of joint stock companies incorporated for the purpose of carrying on undertakings of a public nature in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament relating to such companies:

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to such companies, and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as The Companies Clauses Act, 1863.

Division of
 Act into
 parts.

2. This Act shall be deemed to be divided into four parts, as follows:—

- Part I. relating to cancellation and surrender of shares;
 - Part II. relating to additional capital;
 - Part III. relating to debenture stock;
 - Part IV. relating to change of name.
-

PART I.

26 & 27
Vict. c. 118,
ss. 3—7.

CANCELLATION AND SURRENDER OF SHARES.

3. This part of this Act shall apply to every company incorporated either before or after the passing of this Act which obtains a special Act incorporating this part of this Act. Application of Part I.

4. Where any share of the capital of the company is after the passing of this Act declared forfeited under and in pursuance of the provisions with respect to the forfeiture of shares for non-payment of calls contained in the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (Scotland) Act, 1845, respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given,—then and in every such case, if the directors of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest, and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold shall be cancelled, and the share shall thereupon be cancelled accordingly. Power to company to cancel forfeited shares.

5. A declaration in writing made by some credible person, in England or Ireland before a justice, and in Scotland before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest, and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the Stock Exchange prescribed in the special Act, and if no Stock Exchange is prescribed, then upon the Stock Exchange, as to England of the city of London, and as to Scotland of the city of Edinburgh, and as to Ireland of the city of Dublin, shall be sufficient evidence of the fact so declared. Evidence for cancellation of forfeited shares.

6. Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise. Payment of calls in arrear notwithstanding cancellation.

7. Provided always, that if the company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due; Value of forfeited shares to be deducted from amount due

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26 & 27 VICT. c. 118.

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And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to such companies, and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

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5. A declaration in writing made by some credible person, in England or Ireland before a justice, and in Scotland before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest, and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the Stock Exchange prescribed in the special Act, and if no Stock Exchange is prescribed, then upon the Stock Exchange, as to England of the city of London, and as to Scotland of the city of Edinburgh, and as to Ireland of the city of Dublin, shall be sufficient evidence of the fact so declared. Evidence for cancellation of forfeited shares.

6. Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise. Payment of calls in arrear notwithstanding cancellation.

7. Provided always, that if the company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due; Value of forfeited shares to be deducted from amount due

26 & 27
 Vict. c. 118,
 ss. 8—12.

in respect
 thereof.

provided also, that if payment of all arrears of calls, interest, and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the company's register accordingly.

Company
 may cancel
 forfeited
 shares with
 consent of
 holders.

8. Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled, and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

As to sur-
 render of
 shares.

9. The company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

No money to
 be paid for
 cancellation
 or surrender.

10. The company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

Power to
 create shares
 in lieu of
 cancelled, for-
 feited, &c.
 shares.

11. The company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the company, and may from time to time fix the amounts and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon: Provided, that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

PART II.

ADDITIONAL CAPITAL.

New Ordinary Shares or Stock.

Regulations
 as to creation
 and issue of
 ordinary
 shares or new
 ordinary
 stock.

[See 30 & 31
 Vict. c. 127,
 s. 28.]

12. Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorised by any special Act hereafter passed, and incorporating this part of this Act, to raise any additional sum or sums by the issue of new ordinary shares, or by the issue of new ordinary stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and

stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act; and if no proportion is prescribed, then of three fifths of such votes, may, for the purpose of raising the additional sum or sums, from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times, as the company thinks fit, or such new ordinary stock as the company thinks fit.

26 & 27
 Vict. c. 118,
 ss. 13, 14.

Preference Shares or Stock.

13. Where any such company is authorised by any special Act hereafter passed and incorporating this part of this Act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the like sanction as aforesaid, may for the purpose of raising such additional sum or sums from time to time create and issue (according as the authority given by the special Act extends to shares only, or to stock only, or to both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred, or other dividend or interest, not exceeding the rate prescribed in the special Act; and if no rate is prescribed, then not exceeding the rate of five pounds per centum per annum, and subject (as to any such new shares) to the payment of calls of such amounts and at such times, as the company from time to time thinks fit:

Regulations
 as to creation
 and issue of
 new prefer-
 ence shares or
 new prefer-
 ence stock.

Provided always, that any preference assigned to any shares or stock so issued under the special Act shall not affect any guarantee or any preference or priority in the payment of dividend or interest, on any shares or stock, that may have been granted by the company under or confirmed by any previous Act, or that may be otherwise lawfully subsisting.

Saving rights
 of preference
 shareholders.

14. The preference shares or preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in any year ending on the day prescribed in the special Act, and if no day is prescribed, then on the thirty-first day of December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

Preference
 shares to be
 entitled to
 dividends
 only out of
 the profits of
 each year.

26 & 27
 Vict. c. 118,
 ss. 15—20.

Terms, &c. to
 be stated on
 certificates.

15. The terms and conditions to which any preference share or preference stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock.

In cases not within these sections, it has been held that preference shareholders are entitled to have arrears of interest made up out of the profits of subsequent years (*Henry v. Gt. N. Ry. Co.*, 1 De G. & J. 606; *Corry v. Londonderry, &c. Ry. Co.*, 29 B. 263; *Matthews v. Gt. N. Ry. Co.*, 28 L. J. Ch. 375. See *Webb v. Earle*, 20 Eq. 556).

Preference shareholders who have allowed the surplus profits of one year to be applied in payment of ordinary shareholders instead of in payment of arrears due to them, are not prevented from claiming such arrears against the profits of future years (*Matthews v. Gt. N. Ry. Co.*, 28 L. J. Ch. 375).

General Provisions as to new Shares or Stock.

Unissued
 shares and
 stock may be
 cancelled.

16. If, after having created new shares or new stock, the company determines not to issue the whole of the new shares or new stock, they may cancel the unissued new shares or new stock.

If ordinary
 stock or shares
 at a premium,
 new shares or
 stock to be
 offered to
 existing ordi-
 nary share-
 holders.

17. If, at the time of the issue of new shares or new stock, the ordinary shares or ordinary stock of the company are or is at a premium, then, unless the company before the issue of the new shares or new stock otherwise determines, the new shares or new stock then issued shall be of such amount as will conveniently allow the same to be apportioned among the then holders of the ordinary stock and ordinary shares, respectively, in proportion, as nearly as conveniently may be, to the ordinary shares and ordinary stock held by them respectively, and shall be offered to them at par in that proportion: provided, that it shall not be obligatory on the company so to apportion or offer any new shares or new stock unless the amount of every new share or portion of new stock to be so offered would if so apportioned be at least the sum prescribed in the special Act, and if no sum is prescribed then at least ten pounds.

Offer to be
 made by
 letter.

18. The offer of new shares or new stock shall be made by letter under the hand of the treasurer or secretary of the company given to every such shareholder or stockholder as aforesaid, or sent by post addressed to him according to his address in the shareholders or stockholders address book, or left for him at his usual or then last known place of abode in England, Scotland, or Ireland (as the case may require); and every such offer made by letter sent by post shall be considered as made on the day on which the letter in due course of delivery ought to be delivered at the place to which it is addressed.

New shares or
 stock to vest
 on acceptance.

19. The new shares or portions of new stock so offered shall vest in and belong to the shareholders or stockholders who accept the same or their nominees.

As to disposal
 of new shares
 or stock to
 others.

20. If any shareholder or stockholder fails for the time prescribed in the special Act, and if no time is prescribed then for one month, after the offer to him of new shares or new stock, to signify

his acceptance of the same or any part thereof, then and in every such case at the expiration of that period he shall be deemed to have declined the offer of such new shares or new stock or such part thereof as aforesaid, and the same may be disposed of by the company as hereinafter provided :

26 & 27
Vict. c. 118,
ss. 21, 22.

Provided, that where a shareholder or stockholder, from absence abroad or other cause satisfactory to the directors of the company, omits to signify within the time aforesaid his acceptance of the new shares or new stock offered to him, the directors, if they think proper, may permit him to accept the same, notwithstanding that such time has elapsed.

Power to en-
large time for
accepting new
shares or
stock.

21. Subject to the foregoing provisions, the company may from time to time dispose of new shares and new stock at such times, to such persons, on such terms and conditions, and in such manner as the directors think advantageous to the company,* [but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof.]

General
power to dis-
pose of un-
appropriated
new shares
and stock.

* [Repealed
by 32 & 33
Vict. c. 48,
s. 5; 38 & 39
Vict. c. 66.]

PART III.

DEBENTURE STOCK.

22. Where any company, incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking, is authorised by any special Act hereafter passed, and incorporating this part of this Act, to create and issue debenture stock,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special Act, and if no proportion is prescribed, then of three fifths of such votes, may from time to time raise all or any part of the money which for the time being they have raised, or are authorised to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges, as the company thinks fit, of stock to be called debenture stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and perpetual preferential interest* [not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum], payable half-yearly or otherwise, and commencing at once, or at any future time or times, when

Regulations
as to creation
and issue of
debenture
stock.

[See 32 & 33
Vict. c. 48.]

* Repealed
by 30 & 31
Vict. c. 127,
s. 24, and 38
& 39 Vict.
c. 66.

26 & 27
 Vict. c. 118,
 ss. 23—26.

and as the debenture stock is issued, or otherwise, as the company thinks fit.

By the Debenture Stock Act, 1871 (34 Vict. c. 27), trustees, executors, administrators, or any other persons holding funds in a fiduciary capacity, having power to invest in mortgages or bonds of a railway or other company, are authorised to invest in debenture stock unless the contrary is expressed in the instrument creating the power.

In *Harrison v. Cornwall Minerals Ry. Co.*, 18 Ch. D. 334; 8 App. C. 780, the priorities of different issues of debenture stock under various Acts were discussed.

Debenture
 stock to be a
 prior charge.
 [See Railway
 Companies
 Act, 1867,
 s. 23.]

23. Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company, prior to all shares or stock of the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate.

Interest on
 debenture
 stock to be a
 primary
 charge.

24. The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority.

See *In re Burry Port, &c. Ry. Co.*, 33 W. R. 741; 54 L. J. Ch. 710.

Payment of
 arrears may
 be enforced
 by appoint-
 ment of
 receiver or
 judicial
 factor.

25. If within thirty days after the interest on any such debenture stock is payable the same is not paid, any one or more of the holders of the debenture stock holding, individually or collectively, the sum in nominal amount thereof prescribed in the special Act, and if no sum is prescribed, then a sum equal to one tenth of the aggregate amount which the company is for the time being authorised to raise by mortgage, by bond, and by debenture stock, or the sum of ten thousand pounds, whichever of the two last-mentioned sums is the smaller sum, may (without prejudice to the right to sue in any Court of competent jurisdiction for the interest in arrear) require the appointment in England or Ireland of a receiver, and in Scotland of a judicial factor.

Mode of
 appointing
 receiver or
 judicial
 factor.

26. Every such application for a receiver shall be made to two justices, and every such application for a judicial factor shall be made to the Court of Session; and on any such application the justices or Court (as the case may be), by order in writing, after hearing the parties, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of the interest, until all the arrears of interest then due on the debenture stock, with all costs, including the charges of receiving the tolls or sums, are fully paid; and upon such appointment being made all such tolls or sums shall be paid to and received by the person so appointed: and all money so received shall be deemed so much money received by or to the use of the several persons interested in the same, according to their several priorities.

The receiver or judicial factor shall distribute rateably and without priority, among all the proprietors of debenture stock to whom interest is in arrear, the money which so comes to his hands, after applying a sufficient part thereof in or towards satisfaction of the interest on the mortgages and bonds of the company.

26 & 27
Vict. c. 118,
ss. 27—31.

As soon as the full amount of interest and costs has been so received, the power of the receiver or judicial factor shall cease, and he shall be bound to account to the company for his acts or intrusions or the sums received by him, and to pay over to the company any balance that may be in his hands.

27. If the interest on debenture stock is in arrear for thirty days next after any of the respective days whereon the same is payable, the holder for the time being thereof may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any Court of competent jurisdiction.

Arrears may
be recovered
by action or
suit.

28. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee, bondholder, debenture stockholder, shareholder, and stockholder of the company, without the payment of any fee, or charge.

Debenture
stock to be
registered.

29. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him; and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, *mutatis mutandis*, to certificates of debenture stock.

Company to
deliver certi-
ficate to
holders of
debenture
stock.

30. Nothing herein or in the special Act authorising the issue of debenture stock contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise money on mortgage or bond, but the holders of all such mortgages and bonds shall, during the continuance thereof respectively, be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if the special act authorising the issue of debenture stock had not been passed.

Mortgages
not affected
by this Act.

The creation of the stock is, it seems, the time when the resolution authorising the issue is passed (*In re Burry Port, &c. Ry. Co.*, 33 W. R. 741; 54 L. J. Ch. 710).

31. Debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this Act or the special Act provided for, be considered as entitling

Holders of
debenture
stock not to
vote.

26 & 27
 Vict. c. 118,
 ss. 32—37.

the holders to the rights and powers of mortgagees of the undertaking other than the right to require re-payment of the principal money paid up in respect of the debenture stock.

Application of
 money raised.

32. Money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

Separate
 accounts of
 debenture
 stock.

33. Separate and distinct accounts shall be kept by the company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

Borrowing
 powers ex-
 tinguished to
 extent of
 debenture
 stock.

34. The powers of borrowing and re-borrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

Application of
 Part III. to
 mortgage
 preference
 stock, and
 funded debt.

35. The provisions of this part of this Act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this Act wherever debenture stock is mentioned therein.

PART IV.

CHANGE OF NAME.

Continuance
 of powers.

36. Where by any special Act hereafter passed and incorporating this part of this Act the name of any company incorporated either before or after the passing of this Act for the purpose of carrying on any undertaking is changed,—then and in every such case from the passing of the special Act the company by their new name shall have and may exercise the powers then vested in the company by their original name; and all Acts relating to the company by their original name shall be read and interpreted as if throughout those Acts, wherever the original name of the company or any reference to the company by their original name occurs, the new name of the company or a reference to the company by their new name were substituted.

Actions, &c.
 not to abate.

37. No action, suit, bill, process, writ, indictment, information, or other proceeding, whether civil or criminal, which at or immediately before the passing of the special Act is commenced and is then pending,—either at the suit or instance of the company, by

their original name, against any other corporation or any person or at the suit or instance of any other corporation or any person against the company, by their original name,—shall abate, determine, or be otherwise impeached or affected for or by reason of the change of the name of the company; nor shall any notice, tender, requisition, warrant, summons, pleading, civil or criminal writ or other process, record, deed, contract, agreement, writing, or instrument then or thereafter to be made, issued, written, or commenced, be deemed to be vacated, discharged, invalidated, prejudiced, or affected by reason of the company or their undertaking being therein respectively called by the original name of the company or undertaking: and it shall not be necessary in any bill, suit, indictment, information, proceeding, notice, tender, requisition, warrant, summons, pleading, civil or criminal writ, or other process, or in any record, deed, contract, agreement, writing, or other instrument or matter, to aver that the company had been called or known for any period by the original name of the company, or that their undertaking had been called or known within that period by the original name of the undertaking, and that by the special Act effecting the change the names of the company and their undertaking were changed, and that after the passing of that special Act the company had been called or known by their new name and their undertaking by its new name; but it shall be deemed true, lawful, and sufficient therein to aver the style and describe the company by their new name, and their undertaking by its new name, in the same manner as if the company had been originally incorporated, called, or known, by their new name, and as if their undertaking had been originally called or known by its new name.

26 & 27
Vict. c. 118,
ss. 38, 39.

38. Notwithstanding the change of the name of the company, everything before the passing of the special Act effecting the change done, suffered, or confirmed under or by virtue of any other Act, shall be as valid as if the special Act effecting the change were not passed; and the change of name and last-mentioned special Act respectively shall accordingly be subject and without prejudice to everything so done, suffered, or confirmed before the passing of the last-mentioned special Act, and to all rights, liabilities, claims, and demands, then present or future, which, if the change of name had not happened and such last-mentioned special Act had not been passed, would be incident to or consequent on anything so done, suffered, or confirmed.

General
saving of
rights.

39. Notwithstanding the change of the name of the company, all deeds, instruments, purchases, sales, securities, and contracts before the passing of the special Act effecting the change made under any other Act, or with reference to the purposes thereof, shall be as effectual to all intents in favour of, against, and with respect to the company as if the name of the company had remained unchanged.

Contracts, &c.
preserved.

THE UNION ASSESSMENT COMMITTEE AMENDMENT ACT, 1864.

27 & 28 VICT. c. 39.

27 & 28
Vict. c. 39,
s. 5.

An Act to amend the Union Assessment Committee Act, (1862.)
[14th July, 1864.]

WHEREAS it is expedient to amend the Union Assessment Committee Act, 1862, in regard to appeals against poor rates, and to make further provisions for securing correct and uniform valuations of the property liable to be assessed to the relief of the poor: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same:

Notice of
assessment to
be given to
certain com-
panies.

5. Within fourteen days after the transmission to the assessment committee of any valuation or supplemental valuation list the committee shall give notice to every railway, telegraph, canal, gas, and water company named in such list as the occupier of any property included therein, and not having any office or place of business in the parish to which such list relates, of the sum or sums set down as the rateable value of the property purporting to be occupied by such company or companies, and such notice may be served by being transmitted through the post to the principal office of the company, or one of their principal offices when there shall be more than one.

Poor law.

By 43 Eliz. c. 2, s. 1, it is enacted that the sums for the relief of the poor are to be raised by "taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate or appropriations of tithes, coal-mines, or saleable underwoods in the said parish."

Parochial
Assessment
Act.

By the Parochial Assessment Act (6 & 7 Will. IV. c. 96), it is enacted that no rate to the relief of the poor shall be allowed or be of any force which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto, "that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent."

Profits of
stock in trade
not rateable.

And by 3 & 4 Vict. c. 89, which was originally enacted as for a limited period, but has been continued in force by various Acts, it is provided "That it shall not be lawful for the overseers of any parish, township, or village, to tax any inhabitant thereof as such inhabitant in respect of his ability derived from the profits of stock-in-trade, or any other property for or towards the relief of the poor. Provided always, that nothing in this Act contained shall in anywise affect the liability of any parson, vicar, or of any occupier of lands, houses, tithes impropriate, propria-

tions of tithes, coal-mines, or saleable underwoods, to be taxed for and towards the relief of the poor."

As to other mines, rights of fowling, &c., and land used for plantations, see 37 & 38 Vict. c. 54.

Railway companies are, of course, rateable as occupiers of land (*R. v. Fletton*, 30 L. J. M. C. 89; *R. v. Sherard*, 33 L. J. M. C. 5).

But a company which only enjoys mere running powers over the line of another company is not in occupation of that line so as to subject the company enjoying the privilege to rateability (*Midland Ry. Co. v. Badgworth*, 34 L. J. M. C. 25).

Where a line of railway belonged to two companies, each holding a moiety of it in fee simple, and each enjoying running powers over its entire length, the company owning the line of railway in Badgworth were rateable in that parish, and the principle of rating was an assessment of the profits made in the parish, enhanced by the right to run free over the half of the line belonging to the other company (*Gt. W. Ry. Co. v. Badgworth*, L. R. 2 Q. B. 251; 36 L. J. M. C. 33).

A similar principle to that last referred to was given effect to in the older case of *Reg. v. London & Brighton Ry. Co.*, 15 Q. B. 313; 20 L. J. M. C. 124.

Although the enjoyment of running powers does not make the privileged company an occupier, still the owning company does not cease to be the occupier for rating purposes by entering into agreements with other companies by which they are to have the power to use the line for a long time on the terms of an annual payment, if at the same time they keep a part of the traffic in their own hands, do the repairs, pay the servants, and receive a rent for a crossing on the line (*Leeds, Bradford & Halifax Ry. Co. v. Armley*, 25 J. P. 711. See also *L. & N. W. Ry. Co. v. Buckmaster*, L. R. 10 Q. B. 70; 44 L. J. M. C. 29).

Rent paid by one company for the use of another company's station must be brought into the gross receipts of the occupying company (*R. v. Fletton*, 30 L. J. M. C. 89).

Where an owning company entered into an agreement by deed under which another company were to have exclusive use of part of their station, and the joint use of another part, for a long time at a certain sum per annum, it was held that as to that part which was used jointly the first-mentioned company was still in occupation, and in rating them for such occupation the sum paid by the other must be considered as part of the profits of the business, and as enhancing the value of their occupation (*R. v. Sherard*, 33 L. J. M. C. 5).

But anything which may be received and cannot be enjoyed by the railway company must be regarded as a deduction from the receipts in arriving at the "gross receipts" for rating purposes. Thus, where by an agreement between two companies owning railways which formed part of a continuous line, the one was to be at liberty to convey such of their passengers as had tickets for the entire distance over the line of the other paying for each passenger so carried a certain sum by way of toll, it was held that in estimating the gross receipts of that company the sums paid over under the agreement must be deducted from the actual receipts (*R. v. St. Pancras*, 32 L. J. M. C. 146).

The rate is only to be imposed on property within the parish, but every circumstance which increases the value of that property, whether arising within or without the parish, must be taken into account.

The principle of rating a parochial part of a railway is, that the amount on which a railway, when a railway company are themselves the carriers, is to be assessed, is the rent which a tenant would pay for the railway to be used by him in the same way as the company use it, that is, by running carriages on it on his own account, and paying all expenses incidental to working the railway. That rent is to be free of all tenant's rates and taxes, and tithe commutation rent-charge, and after deductions have been made for the average annual cost of repairs, insurance, &c., as mentioned in the Parochial Assessment Act. It is not correct, therefore, to rate a railway in a particular parish in proportion to the length of line in the parish, but in the proportion which the receipts for traffic in such parish bear to the receipts throughout the whole line, and that although the additional value of that part of the line might arise in some manner from the stations and other works outside the parish (*R. v. L. & S. W. Ry. Co.*, 1 Q. B. 558).

In finding the gross value of the property in the parish, which is the first calculation in the process of arriving at the rent which is to be the basis of rating, the fares, as well as the tolls are to be taken into account (*ibid.*, and *R. v. Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94).

Everything that can properly be regarded as enhancing the value of the occupation must be taken into account, but nothing more. A railway company being empowered to levy a toll on goods passing through a certain tunnel, did not levy it, on the ground that if they did, the carriage of the goods would be lost to them,

27 & 28
Vict. c. 39,
s. 5.

Railway companies rateable.

Company having running powers not rateable.

Mutual running powers.

Company still to be rated if in possession of the line although other companies use it.

Rent for use of stations part of gross receipts,

Rent for joint occupation.

What is received by one company for another not part of gross receipts.

Rate on property within the parish may be enhanced.

What a tenant would pay.

What rent is foundation of rate.

Mileage method not correct.

Fares as well as tolls to be considered.

Value of occupation.

When authorised toll was not charged.

37 & 36
Vict. c. 39,
s. 5.

Terminals
earnings of
line.

Terminals on
through
traffic how
apportioned.

Collection and
delivery not
terminals.

Payments
under
guarantee not
to be consid-
ered.

Contributive
value.

Main line
traffic consid-
ered.

Profits earned
on other por-
tions not to be
considered in
rating paro-
chial part.

Value of
branch as
"feeder" not
to be consid-
ered

"Competitive
value."

Earnings on
main line
giving value
to branch.

Where no
receipts.

Mileage and
parochial
methods of
apportion-
ment.

Where money
earned is the
question.

Immaterial
questions.

were not to be rated for such toll (*R. v. Stockton & Darlington Ry. Co.*, 8 L. T. N. S. 422).

Terminal charges are to be considered as part of the general earnings of the line, and not of the stations, and are to be considered in estimating the gross earnings and expenses of the line in the parish (*R. v. E. Counties Ry. Co.*, 32 L. J. M. C. 174).

But although terminals are to be brought into the gross receipts, they are, when earned in connection with through traffic, to be confined to the line of the company that earns them (*Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor Union*, 2 N. & Mac. 53).

Collection and delivery, strictly so-called, form no part of terminals or terminal services, and being performed off the line, should not in any way be brought into the accounts for rating purposes (*ibid.*).

Payments made to a railway company under a collateral contract of guarantee, by which the guarantors undertake to make up a certain dividend in case the profits of occupation shall fall short of a certain amount, are not to be taken into consideration in rating the railway (*Newmarket Ry. Co. v. St. Andrew's-the-Less, Cambridge*, 23 L. J. M. C. 76).

Railway sleepers are substantially an addition to the freehold, and give an additional value to the land. They are, therefore, properly included as an item of value in the assessment (*Gt. W. Ry. Co. v. Melksham*, 34 J. P. 102).

The rateable value of land in a parish may be increased by its producing a return to the occupiers out of the parish, as where a branch railway occupied by a company owning a main line into which it runs produces a profit by virtue of the traffic which it causes over such main line (*L. & N. W. Ry. Co. v. Cannock*, 9 L. T. N. S. 325).

In that case, one of the most disputed questions in connection with railway rating, *viz.*, the question of "contributive value," was raised. It has been variously decided. Thus, it was held that the rateable value of a portion of a railway, consisting of the net annual profits from the traffic upon the portion rated cannot be increased by any part of the profits earned by the same traffic upon other portions of the line (*Gt. E. Ry. Co. v. Haughley*, L. R. 1 Q. B. 666; 35 L. J. M. C. 229).

In another case, it was held that in assessing to the poor rate of a parish a branch line of railway, which branch was leased to the owners of a main line into which it ran, the parish authorities were not entitled to take into consideration the value of the branch line as a feeder to other lines in different parishes (*R. v. Llantrissant*, L. R. 4 Q. B. 364; 38 L. J. M. C. 93).

In a more recent case, however, which does not seem to be reconcilable with the decisions in those above referred to, it was decided that in assessing to the poor rate a part of a branch line passing through the respondent's parish, the fact that three companies would be willing to pay what was equivalent to a large rent for it was to be taken into account as an element in ascertaining the rent at which it might reasonably be expected to let from year to year. It appeared in that case that the rent which the competing companies would have given would have been large, not in consideration of what was earned on the branch line, but of what the branch line enabled the company having possession of it to earn on the main line (*R. v. L. & N. W. Ry. Co. (Bedford Union Case)*, L. R. 9 Q. B. 134; 43 L. J. M. C. 81).

And that case was expressly followed in the *L. & N. W. Ry. Co. v. Irthlingborough*, 35 L. T. N. S. 327. See also *Cornwall Ry. Co. v. Liskeard Union*, Browne on Rating, 2nd ed., p. 623, and *M. S. & L. Ry. Co. v. Caistor Union*, Browne on Rating, 2nd ed., p. 636.

If no profit is made on the railway, it must be assessed on the value of the land as agricultural land (*R. v. Parrot*, 5 T. R. 593; *Reg. v. Fange*, 3 Q. B. 242).

The cases above cited relate to the question what must be taken into consideration in estimating the "gross receipts" on any parochial part of a railway; but even when the "gross receipts" of the whole line are known, it is difficult, in many cases, to ascribe the proper amount of receipts to any part of a line in any individual parish. It is settled that the parochial method of apportioning these receipts is the right one, and that the method of apportioning them by mileage is incorrect (*Rez v. Kingswinford*, 7 B. & C. 236; *Reg. v. London & Brighton Ry. Co.*, 15 Q. B. 313; 20 L. J. M. C. 124; *Reg. v. S. E. Ry. Co.*, 15 Q. B. 344; *Reg. v. Midland Ry. Co.*, 15 Q. B. 353. And this view was expressly affirmed in *R. v. Gt. W. Ry. Co.*, 15 Q. B. 1085; 7 Rail. Cas. 130).

The mere question of where the money, which is the foundation of the value of the occupation, is received, is not the one which has to be decided, but where it is earned (*R. v. Barnes*, 1 B. & Ad. 116).

It is to be remembered that the prime cost of the railway is an immaterial

question, for the money may have been injudiciously expended, and what at one time may have cost much may have become worth little (*R. v. Mile End Old Town*, 10 Q. B. 218).

So, too, where a railway is leased, the rent which is paid is not to be taken as the sole or conclusive criterion of rateable value (*S. E. Ry. Co. v. Dorking*, 23 L. J. M. C. 84).

But at the same time, rent is *prima facie* evidence of value; and a railway may have a "competition value" if it is in such a position that several railway companies would give a large rent for it (*R. v. L. & N. W. Ry. Co. (Bedford Union Case)*, L. R. 9 Q. B. 134).

It has been shown how the gross receipts of a line are to be arrived at, and upon what principle a portion of them are to be regarded as earned in any particular parish; but when that sum has been arrived at, a great many deductions have to be made from it, with the view of arriving at the rateable value of that parochial part. Rent is the foundation of rateable value, and what rent a tenant would pay can only be arrived at by deducting working expenses, and other costs which will be incurred by a tenant, from the gross receipts. In one case it was decided that the rateable value is properly calculated by deducting from the gross receipts of the company—1st, a sum per cent. for interest on the capital actually invested by them in rolling stock; 2nd, for tenant's profits and risks; 3rd, for depreciation of stock; 4th, for working expenses; 5th, for rent of stations; 6th, a mileage for renewing and reproducing (*R. v. Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94).

But in that case the Court refused to interfere with the amount of the several deductions allowed by the quarter sessions (*ib.*).

It is usual in practice to deal with these deductions in a somewhat different order, and we will in this place follow the usual method.

1. *Working expenses.*—Under this head, there are various items which are generally classified under the following heads:—

1. *Maintenance of way and works.*
2. *Locomotive expenses.*
 - (a) *Coaching.*
 - (b) *Merchandise.*
3. *Carriage and waggon repairs.*
4. *Traffic charges.*
5. *General charges.*
6. *Miscellaneous charges.*
7. *Legal expenses.*
8. *Government duty.*

Besides these, there may be other expenses which are properly deducted under this head, as, for instance, "Rent of stations," "Mileage and demurrage," "Tolls payable." It may be useful to deal with these items of working expenses separately.

1. *Maintenance of way and works.*—It is important to distinguish between repairs and renewals. The former are, the latter are not properly, a deduction under this head. Any repairs which, like the substitution of steel for iron rails, are in the nature of improvements, are not, to the whole extent of their cost, chargeable as a deduction for maintenance. An apportionment by train mileage is generally the fairest in the case of these expenses; but a mileage division of these expenses is not unfrequent in practice. It is not uncommon, however, to divide the gross expenses of the maintenance of the railway according to length mileage, traffic receipts, and train mileage, and to take the average of the three results.

2. *Engine expenses.*—These vary considerably in relation to the kind of traffic in connection with which the locomotive is employed, and hence it is necessary in fairness to certain parishes to have these expenses separated and allocated in relation to the particular description of engine-miles which may be run in the parish. These expenses, which include all the necessary costs of working, maintaining, repairing, and renewing of the engines, once ascertained in connection with the total number of train miles run, will give the average cost of every train mile—the number of train miles run through the parish in question will be the ground of allocating a certain amount to the parish under this head of deduction.

3. *Carriage and waggon repairs.*—The same may be said of these as of engine expenses; but the train mileage of a company may be calculated either including or excluding their foreign running. The larger of these mileages is applied in allocating locomotive expenses; but it has been attempted to apply the smaller in apportioning the expenses under this head, which would, of course, throw more of the burden of these expenses on the parish in question. Where these carriages and

27 & 28
 Vict. c. 39,
 s. 5.

Necessary
 deductions.

Rent and
 rateable
 value.

Court will not
 interfere with
 amount of
 deductions.

Working ex-
 penses.

Maintenance
 of way and
 works.

Locomotive
 expenses.

Carriage, &c.
 expenses.

27 & 28 Vict. c. 39, s. 5.	waggons run on foreign lines, the train mileage on these lines ought to be included as the divisor (<i>Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor Union</i> , 2 N. & Mac. 53).
Traffic charges.	Where a railway company makes and repairs their own rolling-stock, it may not deduct a trade profit on such repairs (<i>L. & N. W. Ry. Co. v. Wigan Union</i> , 2 N. & Mac. 240).
General charges.	4. <i>Traffic charges</i> .—These consist of charges in connection with passengers, parcels, horses and carriages, mails, merchandise, live-stock, and minerals, and these ought to be apportioned in relation to traffic receipts. 5. & 6. <i>General and miscellaneous charges</i> .—These include payments to the central staff. As to the apportionment of these, see per Lord Campbell in <i>Reg. v. Gt. W. Ry. Co.</i> , 15 Q. B. 1085).
Law charges.	An allowance to directors of a company is a proper deduction under this head (<i>Reg. v. Southampton Dock Co.</i> , 15 Q. B. 313. But see <i>Rex v. St. Giles's, Camberwell</i> , 19 L. J. M. C. 122).
Government duty.	7. <i>Law charges</i> .—These are a proper deduction, and ought to be allocated in relation to receipts. Parliamentary expenses are not, however, a proper deduction (<i>Reg. v. Gt. W. Ry. Co.</i> , 6 Q. B. 184). 8. <i>Government duty</i> .—This tax was imposed by 5 & 6 Vict. c. 79, and is in relation to all passenger receipts. It is a proper deduction, and ought to be allocated in relation to passenger receipts.
Rent payable.	<i>Rents payable</i> .—This is an allowable deduction (<i>Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor Union</i> , 2 N. & Mac. 53), and ought to be apportioned in relation to traffic receipts.
Rateable value of line and stations.	When the various deductions under the head working expenses have been made, we will get at the net receipts of the line and stations. <i>The rateable value of the stations</i> has been separately assessed, and must therefore be a deduction from this gross sum of net receipts, in order to arrive at the rateable value of the line.
Station, what is.	It may be difficult in some cases to distinguish between line and station for this purpose, but it has been decided that in ascertaining how much of the adjacent land occupied by the railway company formed part of the stations, and an element of their rateable value as distinguished from the line itself, all sidings, for whatever purpose used, should be included, and only the average quantity of the land required for the main tracks, and only the permanent way necessary to such tracks at any point in their length, should be excluded (<i>L. & N. W. Ry. Co. v. Wigan Union</i> , 2 N. & Mac. 240). Doubt has been thrown upon this case if it has not been actually overruled by the <i>Gt. E. Ry. Co. v. Fletton</i> , Browne on Rating, 2nd ed., p. 631.
How rated.	Stations are held to contribute only indirectly to the profits of the line, and the principles on which contributive parts of an undertaking are to be rated has been settled by the <i>West Middlesex Waterworks Case</i> , 28 L. J. M. C. 135.
Contributive parts of undertaking.	That principle is that the local rateable value would be such a sum as would pay the rent of the land, and the profit on the fixed capital therein (see also <i>Birmingham Canal Nav. v. Birmingham Overseers</i> , 19 L. J. M. C. 311).
Dock in connection with railway.	A dock in connection with a line of railway may be, as it were, in part, a water terminus of the line (<i>Manchester, Sheffield and Lincolnshire Ry. Co. and Trent Anchohm & Gt. Grimsby Ry. Co. v. Caistor Union</i> , 2 N. & Mac. 53).
Net receipts due to line.	It is perhaps most correct to arrive at the actual rateable value of the stations according to the method indicated, and make that a deduction. In many cases, however, a deduction of five per cent. on the gross receipts has been allowed as a deduction for stations. In other cases, however, a smaller per-centage has been allowed (<i>Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor Union</i> , 2 Nev. & Mac. 53).
Tenants' deductions.	But even after net receipts due to the line have been ascertained the <i>Tenant's deductions</i> have to be made. The claim is generally made for:—1, Interest on capital; 2, Trade profit; 3, Insurance against risks and casualties; 4, Depreciation of rolling-stock. Or it may be preferred in this way:—1, Tenant's capital including rolling-stock, work-shops, tools, horses, furniture at stations, &c.; 2, Stores; 3, Floating capital.
Where no "tenant's capital" allowed.	The interest for the sum actually invested by the company in rolling-stock is a proper deduction (<i>R. v. Grand Junction Ry. Co.</i> , 13 L. J. M. C. 94). But where a line belonging to one company was worked by another who found all the rolling-stock in consideration of receiving a per-centage of the gross receipts, it was decided no tenant's capital ought to be allowed as a deduction to the owning company (<i>Trent Anchohm & Gt. Grimsby Ry. Co. v. Caistor & Glandford Brigg Unions</i> , 2 N. & Mac. 53).

The present value of the stock, and not what it originally cost the company, is to be the means of judging what capital the tenant would require (*Reg. v. Gl. W. Ry. Co.*, 6 Q. B. 179; *R. v. N. Staffordshire Ry. Co.*, 30 L. J. M. C. 68.)

There has been difficulty in deciding what a tenant would have to provide, and what are properly landlord's fixtures. Whatever is a part of the hereditament is assessable, and must not be treated as tenant's capital (*Reg. v. Southampton Dock Co.*, 20 L. J. M. C. 155. See also *Reg. v. N. Staffordshire Ry. Co.*, 30 L. J. M. C. 68. See also *Reg. v. Overseers of Lee*, L. R. 1 Q. B. 241; *Reg. v. Halstead*, 31 J. P. 373; *Chidley v. West Ham*, 39 J. P. 310. See *Reg. v. Overseers of Bishop Wearmouth*, 3 Q. B. D. 299; *Tyne Boiler Works Co. v. Tynemouth*, 18 Q. B. D. 81).

Where machinery is permanently attached to the freehold it becomes a part of it, and is rateable (*L. & N. W. Ry. Co. v. Wigan Union*, 2 N. & Mac. 240). If machines are only attached for some temporary purpose, they are chattels, and would probably have to be provided by the tenant, and their present value is allowable as a deduction under this head.

Capital is required for stores, and that must be allowed for as a tenant's deduction. But besides the money invested in these stores and the rolling-stock, the depreciation of these must be considered. Waggon and engines have only a certain life, and will, however well repaired, ultimately go to the scrap heap. An allowance for this depreciation is a proper one (*Reg. v. Overseers of Great Haughley*, L. R. 1 Q. B. 666).

Where a floating capital is necessary to carry on the business of a railway company, it is to be allowed as a deduction (*Reg. v. N. Staffordshire Ry. Co.*, 30 L. J. M. C. 68; *Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor Union*, 2 N. & Mac. 53).

Of course a tenant would expect a profit for carrying on the business of a railway, and a certain profit is a proper deduction, and has always been allowed (*R. v. Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94).

The capital, when found, ought to be divided in the ratio of sectional train miles (*Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor Union*, 2 N. & Mac. 53).

It has already been stated that, where the company in occupation of the line did not actually supply or require rolling-stock, but had its line worked by another company for a per-centage of the receipts, no tenant capital was allowed as a deduction; but in the case which decided that, it was held that although no profit on the hypothetical capital ought to be allowed any more than interest on that capital, still, a certain per-centage for tenant's profits should be allowed, and that that per-centage—5 per cent. in that case—would cover outlay in floating capital, stores, furniture, and the like (*Manchester, Sheffield & Lincolnshire Ry. Co. v. Caistor & Glandford Brigg Unions*, 2 N. & Mac. 53).

Having made the necessary deductions in respect of tenant's share, there remains to be made a deduction on behalf of the landlord, for the Parochial Assessment Act contemplates an expenditure for repairs, insurance, and other expenses which will enable the hereditament to command the rent, and some of these expenses would not be incurred by a tenant from year to year. A sum therefore for the

Reproduction and renewal of permanent way is a proper landlord's deduction (*R. v. Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94; *Reg. v. London & Brighton Ry. Co.*, 15 Q. B. 313. See also *Reg. v. Wells*, L. R. 2 Q. B. 542).

Improvements are, for the purposes of this deduction, to be distinguished from renewals, and are not to be allowed as a deduction, for they would enable the hereditament to command not the same, but a greater rent. The proper way of making this deduction is not by means of an average mileage principle, but by taking the actual outlay in the parish (*L. & N. W. Ry. Co. v. Kings Norton Union*, 34 J. P. 102).

After making these deductions, the rateable value of the line, plus the rates and taxes, will have been arrived at. When the rates and taxes are ascertained they must be deducted from the sum left, to arrive at the net rateable value.

It is not uncommon to provide in the special Act of railway companies that the companies shall be liable to make good the deficiency in the rate which may be caused by their taking possession of land which was rateable, and which, by reason of the construction of their railway, has fallen out of the rate (see *Reg. v. Metr. District Ry. Co.*, L. R. 6 Q. B. 698; 40 L. J. M. C. 113; *Whitechurch v. E. London Ry. Co.*, 41 L. J. M. C. 123).

27 & 28
Vict. c. 39,
s. 5.

Present value of stock is the proper basis. Landlord's fixtures.

Machinery when rateable and when value of allowed as a deduction.

Stores.

Depreciation of rolling stock and stores.

Floating capital.

Tenant's profit.

How allocated.

Profit on capital.

Tenant's profits. Other expenses.

Reproduction and renewal of permanent way.

Improvements.

Net rateable value.

Liability for rate while railway is in course of construction.

THE RAILWAYS ACT (IRELAND), 1864.

27 & 28 VICT. c. 71.

27 & 28
 Vict. c. 71,
 s. 1.

An Act for amending and extending the Railways (Ireland) Act, 1851, and the Railways (Ireland) Act, 1860.

[25th July, 1864.]

WHEREAS it is expedient that the "Railways Act (Ireland), 1851," and the "Railways Act (Ireland), 1860," should be amended, and the provisions thereof extended, as hereinafter mentioned: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The company,
 if dissatisfied
 with award,
 in cases ex-
 ceeding 500*l.*,
 may traverse.

1. In all cases where the amount of money which the arbitrator appointed under the provisions of the said Acts, or either of them, shall have awarded to be paid by the company to any person in respect of any estate or interest in lands shall exceed the sum of five hundred pounds it shall be lawful for the company, if dissatisfied with such award, upon giving to such person within ten days next after the date of such award notice in writing of their intention to appeal therefrom, to have a traverse entered by the company in the Crown Book in respect of such award, at the same time and in like manner in all respects as are provided by the aforesaid Acts with respect to traverses taken by persons dissatisfied with any award, and the like proceedings shall be taken with respect to a traverse so taken by the company, and the verdict of the jury upon such traverse shall have the like effect as in the case of a traverse taken by a person so dissatisfied: Provided always, that in all cases where a traverse shall be so taken by the company, if the verdict of the jury shall be for a sum less than that awarded by the arbitrator, the company shall nevertheless pay to the other party to such traverse such sum not exceeding twenty pounds for the costs of such traverse as the judge before whom the same is tried shall direct; and in case the verdict of the jury shall be for a sum equal to or exceeding the award of the arbitrator, then and in that case the company shall pay to the other party the costs of the traverse, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of an issue from the Court of Queen's Bench.

2. In all cases of traverse taken upon an award of the arbitrator, the company or person appellant shall be entitled to have the same tried by a special jury upon giving notice in writing to the respondent in such traverse of their or his intention that the same shall be so tried ten days previous to the assizes or term respectively (as the case may be), and the respondent in such traverse shall be so entitled upon giving the like notice six days before the said assizes or term: Provided that any judge of any of the Superior Courts sitting in chamber or at nisi prius may at any time order that such traverse shall be tried by a special jury upon such terms as he may think fit.

27 & 28
Vict. c. 71,
ss. 2-7.

Power to have
special jury.

3. Where notice has been given to try by special jury either party may, six days before the first day of the assizes or of the term, as the case may be, give notice to the sheriff that such action is to be tried by a special jury; and in case no such notice has been given, or the notice has not been given in sufficient time, no special jury need be summoned to attend, and such traverse shall be tried before a common jury unless otherwise ordered by the judge before whom the same shall be tried.

Notice to be
given to the
sheriff of
special jury.

4. Either party to such traverse shall be entitled to have the premises viewed by the jury, and for that purpose it shall be sufficient to obtain an order of any such judge as aforesaid directing a view to be had, and thereupon all such proceedings shall be had as are directed by "The Common Law Procedure Amendment Act, (Ireland), 1853," section 116, with respect to view juries.

Either party
to such tra-
verse entitled
to have the
premises
viewed by the
jury.

5. In case either party shall be dissatisfied at the trial of such traverse with the ruling of the judge upon any matter of law, he shall be entitled to appeal from such ruling in the manner herein contained.

Either party
may appeal
from ruling of
judge.

6. The party so objecting shall deliver to the judge at the time of such trial a note in writing, stating such objection and the grounds thereof, and shall and may prepare a case, stating the facts and matters appearing in evidence so far as may be necessary, and the ruling of the judge, and the objections to such ruling, and such case may be accompanied by an appendix containing copies of the material documents; and all proceedings shall be taken with respect to the settlement of such case, and within the same period, as are taken in Ireland with respect to bills of exceptions to the direction of a judge at nisi prius.

The party
objecting
shall deliver
to the judge a
note in writ-
ing, stating
objection, and
grounds
thereof.

7. Such special case and the appendix thereto, when settled and signed by the said judge, shall be filed in such one of the superior Courts as the said judge shall direct, and such Court shall proceed to adjudicate on the same in like manner as upon a special case stated under the said Common Law Procedure Act, and the adjudication of such Court shall be final.

Special case,
when settled
and signed by
the judge, to
be filed.

27 & 28
 Vict. c. 71,
 ss. 17—19.

way company, and his award may be traversed in the same manner as any award made by an arbitrator appointed under the “Railways (Ireland) Acts, 1851 and 1860,” and if not traversed shall be final; and the costs of the said arbitration and of the said arbitrator shall be paid in the same manner as the costs of an arbitration or arbitrator under the “Railways (Ireland) Acts, 1851 and 1860.”

The company shall obey the award of the arbitrator, except in certain cases.

17. The company shall make all such fences, drains, and passages, as by the award of the said arbitrator they shall be directed to make; but no company shall be required to make the same in such a manner as will prevent or obstruct the working or using of the railway, nor shall they be required to make any fence, drain, or passage in respect of which the owner and occupier, or any former owner and occupier, shall have agreed to receive and shall have been paid compensation in lieu of the making of the works themselves.

This Act, and 14 & 15 Vict. c. 70, and 23 & 24 Vict. c. 97, to be read together.

18. The Railways Act (Ireland) 1851, and the Railways Act (Ireland) 1860, and this Act, shall be construed together as one Act; and this Act, together with the said Acts, shall be held to be incorporated with those Acts in any Act already or hereafter incorporating those Acts or any of them.

Short title.

19. This Act may be cited as the Railways Act (Ireland), 1864.

LORD CAMPBELL'S ACT AMENDMENT ACT.

27 & 28 VICT. c. 95.

*An Act to amend the Act Ninth and Tenth Victoria, Chapter
Ninety-three, for compensating the Families of Persons
killed by Accident.* 27 & 28 Vict.
c. 95, s. 1.
[29th July, 1864.]

WHEREAS by an Act passed in the session of Parliament holden in the ninth and tenth years of her Majesty's reign, intituled "An Act for compensating the Families of Persons killed by Accident," it is amongst other things provided, that every such action as therein mentioned shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused as therein mentioned, and shall be brought by and in the name of the executor or administrator of the person deceased: And whereas it may happen by reason of the inability or default of any person to obtain probate of the will or letters of administration of the personal estate and effects of the person deceased, or by reason of the unwillingness or neglect of the executor or administrator of the person deceased to bring such action as aforesaid, that the person or persons entitled to the benefit of the said Act may be deprived thereof; and it is expedient to amend and extend the said Act as hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said Act that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the

Where no action brought within six months by executor of person killed, then action may be brought by persons beneficially interested in result of action.

27 & 28 Vict.
c. 95, ss. 2, 3.

same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

A relative can bring an action, though within six months, unless there is an executor (*Holleran v. Baynell*, 4 L. R. Ir. 740).

Money paid
into court
may be paid
in one sum,
without
regard to its
division into
shares.

If not
accepted,
defendant
entitled to
verdict on the
issue.

This and
recited Act to
be read as
one.

2. And whereas by the second section of the said Act, it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, That it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This Act and the said Act shall be read together as one Act.

IMPROVEMENT OF LAND ACT, 1864.

27 & 28 VICT. c. 114.

The Improvement of Land Act, 1864. [29th July, 1864.] 27 & 28 Vict.
c. 114, ss. 1, 2.

WHEREAS an Act was passed in the twelfth and thirteenth years of her present Majesty, intituled "An Act to promote the Advance of private Money for Drainage of Lands in Great Britain and Ireland," and several companies have been incorporated by Act of Parliament, with special powers for promoting the improvement of land in Great Britain and Ireland by drainage and otherwise: and it is desirable to amend and consolidate the law relating to the improvement of land by owners of limited interests, and to enable such owners to charge their lands with money subscribed for the construction of railways and navigable canals which will permanently increase the value of such lands: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

12 & 13 Vict.
c. 100.

1. The Act first above mentioned, being "The Private Money Drainage Act, 1849," is hereby repealed, except so far as relates to any proceedings on applications pending under the said Act at the date of the passing hereof, it being the intention hereof that all such proceedings shall be worked out under the said Act, and that all charges to be made in consequence of any such proceedings shall be made and operate under the said Act, which shall apply thereto as if this Act had never been passed: Provided also, that nothing herein contained shall affect any charge made under the said Act before the passing hereof, or any right or obligation existing or which may arise in respect of any such charge.

Repealed Act,
12 & 13 Vict.
c. 100,
repealed.

And with regard to the commissioners for the execution of this Act, and other general matters, be it enacted as follows:

Commissioners,
Landowners,
&c.

2. By "the commissioners" shall herein be meant, as regards lands in Great Britain, the inclosure commissioners for England and Wales, and as regards lands in Ireland, the commissioners of public works in Ireland under an Act of the first and second years of his late Majesty King William the Fourth, intituled "An Act for the Extension and Promotion of Public Works in Ireland," and an Act of the fifth and sixth years of the reign of her present Majesty, intituled "An Act to promote Drainage of Lands, and

Interpreta-
tion of "the
commis-
sioners,"
1 & 2 W. 4,
c. 33.
5 & 6 Vict.
c. 89.

27 & 28
Vict. c. 114,
ss. 3—8.

Improvement of Navigation and Water Power in connexion with Drainage, in Ireland," and the several Acts amending the same respectively.

Provisions of
9 & 10 Vict.
c. 101, &c. to
extend and be
applicable to
proceedings
of commis-
sioners.

3. All the provisions of the Act of the ninth and tenth years of the reign of her present Majesty, intituled "An Act to authorize the Advance of Public Money to a limited Amount to promote the improvement of Land in Great Britain and Ireland by Works of drainage," and of any and every other Act for the time being in force relating to any of the aforesaid commissioners, so far as the same may concern or be auxiliary to the proceedings or inquiries of the commissioners under the authority of such Acts or any of them, or the authentication of instruments, shall, except as in this Act otherwise provided, extend and be applicable to their proceedings and inquiries, and the authentication of instruments, under this Act.

Assistant
commissioners
may take
declarations
and examine
witnesses.

4. Every assistant commissioner or inspector acting in any matter, inquiry, or proceeding by the authority and in the execution of this Act may receive declarations and statements, and examine upon declaration all such persons as may voluntarily attend before him in such matter, inquiry, or proceeding.

Punishment
of persons
giving false
evidence.

5. If any person shall wilfully give false evidence in any matter, inquiry, or proceeding under the provisions of this Act, or shall make or subscribe a false statement or declaration for the purposes of this Act, such person shall, in England or Ireland, be deemed guilty of a misdemeanor, and in Scotland of a crime and offence, and shall be punished accordingly.

As to service
of notices on
commis-
sioners.

6. Any notice requiring to be served upon the commissioners may be served by the same being left at or transmitted through the post, directed to their office in London.

As to the ser-
vices of
notices on
other persons.

7. In all cases in which it shall be necessary under the provisions of this Act to serve any notice upon any other person, it shall be sufficient to send such notice in a registered post letter, directed to such person at his then or last known place of residence or of business, unless the letter containing such notice shall be returned from the post office as undelivered; and if such person shall not have any place of residence or of business within Great Britain or Ireland, or if the place of business or of residence of such person cannot with due diligence be ascertained, then such notice may be served upon such other person as his representative, or be given in such other manner as the commissioners shall in such case direct or approve.

Interpretation
of "land-
owner."

8. The word "landowner" shall mean herein, as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary, or other tenure, except where such person shall be a

tenant for life or lives holding under a lease for life or lives not renewable or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the commissioners, without regard to the real amount of interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such lands; and as to lands in Scotland, the word "landowner" shall denote and include every fiar, liferenter, or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases, or tenancies of the tenants in the actual possession thereof; and as to lands in Ireland, the word "landowner" shall mean such person as under the Act passed in the first and second years of the reign of her present Majesty, intituled "An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-charges in lieu thereof," shall have the first estate of inheritance, or other estate or interest equivalent to a perpetual estate or interest therein, and also any tenant in dower or by the curtesy, or any person having under the limitations of any settlement by deed, will, Act of Parliament, or otherwise any estate for life, or other particular estate thereby created or limited out of or in any estate of inheritance, or by, out of, or in any such estate or interest as by or under the last-mentioned Act is to be deemed equivalent to a perpetual estate or interest; and as to lands in any part of the United Kingdom, the word "landowner" shall include a corporation, and also such persons as are empowered by the twenty-third section hereof.

27 & 28
Vict. c. 114,
ss. 9—11.

1 & 2 Vict.
c. 109.

9. By "the improvement of land" shall herein be meant all or any of the following matters, among others:

(6.) The making of permanent farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate.

Interpretation
of "Improve-
ment of
land."

10. The word "person" shall in this Act include companies and all other corporations.

Interpretation
of "Person."

And with regard to the proceedings preliminary to the sanction of any improvements, be it enacted as follows:

11. When any landowner shall be desirous of borrowing or advancing money under this Act for the improvement of his land, he shall make an application to the commissioners to sanction the proposed improvements in such manner and form and stating such particulars as the commissioners shall from time to time direct;

*Proceedings
preliminary
to Sanction
of Improve-
ments.*

Application to
commissioners
to sanction
improve-
ments.

**37 & 38
Vict. c. 114,
ss. 12-15.**

and until the proposed improvements shall have been sanctioned by the commissioners in manner hereinafter mentioned, the application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as hereinafter mentioned for the expenses incurred by the commissioners or their officers in consequence of his application.

Joint appli-
cation by
several land-
owners.

12. Any two or more landowners may, with the consent of the commissioners, join in an application to them to sanction the improvement of the lands of such landowners respectively, but the sum to be charged in pursuance of any such joint application shall be apportioned so that a separate and distinct sum may become charged on the land of each landowner.

Commis-
sioners may
issue forms ;

13. The commissioners may from time to time frame and circulate, as they shall see occasion, forms indicating the particulars of the information to be furnished to them by landowners for the purposes of this Act, and such other forms as the commissioners may deem expedient for facilitating any proceedings under this Act.

require secu-
rity for ex-
penses ;

14. The commissioners may require security to be given to them by the landowner, by bond, deposit, or otherwise, in such form as they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as hereinafter mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works ; but unless the commissioners shall issue such absolute order as hereinafter mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the commissioners, and shall be recoverable by them as in the nature of a crown debt.

cause appli-
cation to be
investigated ;

15. If the commissioners shall think fit to entertain the application so made to them, they may cause the land to be inspected and examined by an assistant commissioner, or an engineer or surveyor, who shall have regard to and examine the proposals and statements contained in such application, and shall report his opinion thereon, and who shall also report whether in his judgment the proposed improvements will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for ; and the commissioners may by themselves, or any assistant commissioner, engineer, or surveyor, make such other inquiries in relation to any such application as they shall think fit : Provided that the above requisition as to increased annual value shall not apply to any outlay proposed to be made upon or in respect of planting only.

16. The commissioners shall have power to require such alterations as they shall think expedient to be made in the improvements proposed, or in the proposed mode of executing them.

27 & 28
Vict. c. 114,
ss. 16-21.

Sections 17 and 18 are repealed by the Settled Land Act, 1882 (45 & 46 Vict. c. 38).

and require
proposed im-
provements to
be modified.

19. If the commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any commissioners, trustees, conservators, undertakers, company, or other body or individuals, or the banks or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such commissioners, trustees, conservators, undertakers, company or other body, or individuals; and in case they shall within one month after the receipt of such notice, signify in writing to the commissioners their dissent from such application, and state the nature of their interest in or authority over such river or canal, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the improvement unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorising the commissioners to sanction the improvement.

The same in
case of navi-
gable rivers
and canals.

20. When the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the commissioners shall not sanction any improvement of such land, or of so much thereof as is so held, unless and until the patron of the benefice, and in England and Ireland the bishop of the diocese, and in Scotland the presbytery of the bounds, shall signify to the commissioners, by writing under their hands, their respective consents to such application.

Consents
necessary in
case of church
lands.

21. If and when any dissent from any such application to the commissioners for their sanction of proposed improvements shall have been notified in writing to the commissioners . . . by the commissioners, trustees, company, or other body or individuals interested in any river or canal which would or might be interfered with as hereinbefore mentioned . . . the landowner desiring such improvements may apply to the High Court of Chancery in England or Ireland where such lands are situate in England or Ireland respectively, or to the Court of Session where such lands are situate in Scotland, for an order of such court authorising the commissioners to entertain and proceed upon the application for such proposed improvements notwithstanding such dissent; and such application shall be made, as to lands in England, to the Master of the Rolls, or any one of the Vice Chancellors sitting at

In case of
dissent, or
when land-
owner's infant
children are to
be protected,
Court of
Chancery or
Session may
authorise
commissioners
to proceed.

[The words
omitted are
repealed by
the Settled
Land Act,
1882.]

27 & 28
 Vict. c. 114,
 ss. 22-24.

chambers, by summons calling on the party dissenting to show cause why such order should not be made; as to lands in Ireland, to the Master of the Rolls, by summary petition or otherwise, as he shall by any general order direct; and as to lands in Scotland, to either division of the Court of Session in time of session, or to the Lord Ordinary sitting on bills in time of vacation, by summary petition; and the court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such court or judge may consider necessary or desirable, or as may be produced before them or him; and if upon a consideration of all the circumstances, such court or judge shall be of opinion that the commissioners should entertain and proceed upon such application, an order shall be made authorising and requiring them to proceed thereon, and to deal with the same according to the provisions of this Act, authorising them in that behalf, notwithstanding such dissent as aforesaid: provided that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application, or to obtain such order.

Service of
 notice under
 preceding
 clause.

22. Where any party dissenting shall be out of the jurisdiction of the court, it shall be lawful for the court or judge to order service to be made in such manner as such court or judge may think fit, and upon proof to the satisfaction of such court or judge that such party has had actual notice within a reasonable time of such intended application, it shall be lawful for such court or judge thereupon to hear and determine such application.

And costs
 may be given
 by the court.

23. The costs of and incidental to every application under the twenty-first and twenty-second sections, and the mode in which such costs shall be settled or taxed, shall be in the discretion of the court or judge who shall hear such application, and if such court or judge shall so direct, the said costs shall be deemed to be part of the expenses of and incidental to the application for the proposed improvements.

Representa-
 tion of per-
 sons under
 disability for
 applications
 and dissents
 under pre-
 ceding
 clauses.

24. All husbands, guardians, tutors, committees, curators, feoffees, trustees, judicial factors, executors, and administrators shall respectively have the same rights and powers of making applications and signifying dissents, and taking other proceedings under this Act, as their respective wives, infants, minors, lunatics, idiots, and furious or fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors, or administrators respectively would have had if the estates, charges, or interests of which they shall be such feoffees, trustees, or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but

no guardian, tutor, committee, curator, feoffee, trustee, judicial factor, executor, or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

27 & 28
Vict. c. 114,
ss. 25—27.

And with regard to the sanction of any improvements, and the rights arising thereunder, be it enacted as follows :

*Sanction of
Improvements,
and rights
thereunder.*

25. If the commissioners shall find that the proposed improvements or any part thereof, whether with or without any alterations by them required or sanctioned, would effect a permanent increase of the yearly value of the lands proposed to be improved, or of any part thereof, exceeding the yearly amount proposed to be charged thereon, they shall sanction such improvements, or such part thereof as they shall think expedient, if under the preceding sections it shall be lawful for them so to do, by an order under their hands and seal ; and they shall by the same order fix the rate of interest to be allowed on the cost of the sanctioned improvements, having regard to the market value of money at the time, but such interest shall never exceed five per cent. per annum.

Commis-
sioners orders
sanctioning
improve-
ments.

26. The commissioners shall from time to time prepare forms of orders for sanctioning improvements, and shall also, whenever required by the landowner so to do, frame and entitle their said orders under this Act in such manner that they may also be and operate as provisional, sanctioning, or other corresponding orders under the respective Acts applying to any company with which he may have contracted relating to the loan or improvements in question : Provided that every order operating under this Act to sanction any improvement shall name the landowner to whom it is issued ; shall express the greatest sum to be charged in addition to any costs, charges, and expenses under the fiftieth section hereof, and the rate of interest and term of years for the repayment thereof, the former not exceeding five per centum per annum, and the latter not exceeding twenty-five years ; shall specify the lands on which such repayment is to be charged ; and shall either express or refer to some contract or other document expressing the general scheme of improvements to be executed.

Forms of
orders sanc-
tioning im-
provements to
be prepared
by commis-
sioners ; what
they must
contain.

27. Every order operating under this Act alone to sanction any improvement may be in the form set forth in Schedule (A) hereto, and shall be called a provisional order, and shall, subject to the following section hereof, create in favour of the landowner named therein the title to an absolute charge on the completion of the sanctioned improvements, which title such landowner may assign, either absolutely or by way of security, to any person ; and such assignment may be made by endorsement on the provisional order.

They may be
called provi-
sional orders,
and may be
assigned to
parties agree-
ing to execute
improve-
ments.

27 & 28
Vict. c. 114,
ss. 28, 29.

Provision for
 death of land-
 owner pend-
 ing comple-
 tion of
 improve-
 ments.

28. In case of the death of any landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements sanctioned thereby, the right to complete such improvements, and to assign the title to an absolute charge, shall pass to the succeeding landowner; but if the succeeding landowner shall not within three calendar months after his succession proceed with the works, so as to complete the same in conformity with the provisional order, the preceding landowner, or in case of his decease his executors or administrators, may complete such improvements, and shall become entitled to have the absolute charge executed to him or them. If the succeeding landowner shall complete the improvements there shall be distinct absolute charges executed to such landowner, and the preceding landowner or his personal representatives, for the outlay made by the preceding and succeeding landowners respectively, and in case of difference the commissioners shall determine the proportions; provided that the succeeding landowner may, with the sanction of the Inclosure Commissioners, and after notice to the parties to whom notice was originally given, or such of them as may be living, and such other persons, if any, as the commissioners may direct, terminate the proceedings under the provisional order, on payment of the outlay and expenses made thereunder, and indemnifying the person to whom the title to the absolute charge may have been assigned. Notwithstanding the foregoing provisions, if the title to an absolute charge shall have been assigned by the preceding landowner, the assignee may complete the improvements if he shall proceed therewith within one calendar month from the time the preceding landowner ceased to be such landowner.

Provisional
 orders may be
 modified.

29. The commissioners may from time to time, on application to be made by the landowner, and after such inquiry as they shall think fit, sanction any modifications or alterations either of the scheme of the improvements or of any other matter expressed or referred to in the provisional order: Provided that no such modification or alteration shall increase the sum to be charged in respect of the improvements, or extend or curtail the term of repayment, beyond the greatest amount which it was proposed so to charge, or the greatest or least term over which it was proposed that the rent-charge should be spread, as respectively stated in the advertisement and notices hereinbefore required: Provided also, that every such modification or alteration shall require the consent of every party who, by having contracted for the execution of the improvements, or by having taken an assignment of the title to an absolute charge, or otherwise, may be interested therein; and the modifying order shall be in such form as the commissioners shall from time to time appoint, and shall be construed together with the original order as one order with respect to all rights arising thereunder after the date of the modifying order.

*Charges for
 Improvements.*

And with regard to charges for improvements under this Act, be it enacted as follows:

49. When the commissioners are satisfied that the improvements sanctioned by them, or some part thereof, have been properly executed, either according to the specifications and plans or drawings approved of by them, or with such deviations therefrom as in their judgment will not diminish the permanent benefit accruing from such improvements to the lands wherein they have been made, they shall execute a charge under their hands and seal upon the inheritance or fee of the lands comprised in the provisional or other sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements, if all the said improvements have been completed, or for a proportional part of such sum if a part only of the said improvements has been executed, together, in either case, with the interest by the same order expressed, and with the amount (if any) which shall have been paid in respect of the purchase of adjoining lands, or of any easement, authority, or right in, through, over, or affecting adjoining lands, with interest thereon at the like rate.

**27 & 28
Vict. c. 114,
ss. 49—51.**

Commissioners to execute charge on completion of works, or of some part thereof.

50. If the landowner is desirous that the inheritance or fee of the lands improved should be charged with the expenses of and incident to his application to the commissioners, or his contract with any company or person relating to the execution of the improvements, or to the advance of money for their execution, the commissioners may ascertain the amount of the costs, charges, and expenses properly incurred preparatory or in relation to and consequent on such contract, and the application to the commissioners or either of them, and may include in the principal money charged on the inheritance or fee of such lands the amount of such costs, charges, and expenses, and of the settled or taxed costs, if any, which a court or judge shall have ordered as aforesaid to be deemed and taken to be part of the expenses of and incident to the application for improvements, or such part thereof as the commissioners think fit; and the commissioners may also include in such principal money interest at a rate not exceeding five pounds per centum per annum on all payments forming part of the same principal money from the respective dates of such payments to that of the absolute order, but so that no interest shall be allowed on any such payment for more than six years; provided that the total amount of the principal money to be charged on the lands improved under the provisions of this Act shall not in any case exceed that to which, in the opinion of the commissioners, the inheritance or fee of the lands improved will be durably benefited by the improvements.

Expenses of application and certain contracts may be included in charge.

51. Every charge under this Act shall be created by way of rent-charge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof to be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the commissioners: and the payment for each

The charges to be by way of rent-charge created by absolute order;

27 & 28
Vict. c. 114,
ss. 52, 78—80.

half year shall be, and be expressed to be, as to part thereof a repayment of a certain amount of principal money, and as to the remainder thereof a payment of interest; and the charge shall be duly stamped for denoting payment of the proper *ad valorem* stamp duty which would be payable on a mortgage for securing the like amount as the principal money thereby charged, and shall be called an absolute order; and a copy of every such absolute order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, and any copy thereof authenticated by their seal, shall be evidence of the contents and purport of the same absolute order.

and may be
 made accord-
 ing to form in
 schedule (B).

52. Charges under this Act shall be made according to the form in the Schedule (B.) hereto annexed, or as near thereto as the circumstances of the case will admit.

*Subscription to
 Railways.*

And with regard to charging lands with money subscribed for the construction of railways, be it enacted as follows:—

Conditions for
 application to
 commis-
 sioners.

78. In case any landowner shall be desirous of subscribing for any shares or stock in the capital, whether original or additional, of a company having power to construct a railway or navigable canal, or any branch or extension railway or navigable canal or any deviation of a line of railway or a navigable canal already sanctioned, the works for which such subscription is to be made being unfinished, or in any additional capital to be raised for the completion of any such railway, canal, branch, extension, or deviation, the same being upon or near to and which will improve or benefit the lands of such landowner, and who shall be desirous that such amount, or any part thereof, may be charged upon the lands so to be improved, it shall be lawful for him to apply to the commissioners for that purpose within the time limited by the Railway or Canal Company's Act or Acts for the construction of the works in question.

Commis-
 sioners pro-
 ceedings on
 application.

79. If the commissioners shall think fit to entertain such application, they shall cause all such inquiries to be made, and take all such other steps, as shall seem to them expedient for obtaining information as to the circumstances; and all the provisions of the thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fifth, and fifty-first sections of this Act shall apply to the case as though an improvement were to be made of the lands proposed to be charged.

Provisional
 order sanc-
 tioning
 charge.

80. If the commissioners shall be satisfied that the railway or canal, when constructed and open for traffic, will effect a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon, they shall execute and deliver to the landowner a provisional order, under their seal and the hands of two of them, expressing their sanction of the charge proposed; and such order shall be made as near to the form set forth in the schedule (A.) to this Act as the circumstances will

permit, and shall, with the right to a charge thereby created, be assignable by endorsement, either absolutely or by way of security, to any company or person that may agree to advance, by paying the same to the railway or canal company, the amount authorised to be charged, and notice of such assignment shall be given to the commissioners, and shall be registered by them.

27 & 28
Vict. c. 114,
ss. 81—85.

81. Every company empowered by Act of Parliament to lend money for the improvement of land is hereby empowered to advance, by paying the same to the railway or canal company, any money authorised to be charged in manner aforesaid.

Companies
empowered to
lend.

82. When the railway or canal shall have been completed and opened throughout for public traffic, and as many shares in the capital of the railway or canal company subscribed for or held as aforesaid by the landowner as shall be equal in nominal amount to the money authorised to be charged shall have been fully paid up, and the certificates for such shares shall have been deposited by the landowner with the commissioners, the commissioners shall, by an absolute order under their hands and seal, execute to the landowner or his assignees a charge upon the inheritance or fee of the lands in question of the amount authorised as aforesaid to be charged, and may, if the landowner shall so desire, include, with the principal money so charged, the costs, charges, and expenses of the application and orders, and of any advance which may have been made to him of the amount authorised to be charged, and such settled or taxed costs and interest as mentioned in the fiftieth section hereof, subject nevertheless to the proviso in the same section contained.

Commis-
sioners ab-
solute order
and its condi-
tions.

83. Such absolute order shall be made in the form in the schedule (B.) to this Act annexed, or as near thereto as the circumstances will permit, and all the provisions of this Act relating to absolute orders, whether in respect of the form or effect of such charges or orders or otherwise, except only the provisions for the apportionment and release of such charges, shall apply to absolute orders under the last preceding section as far as the circumstances admit.

Form and
effect of abso-
lute order.

84. The landowner shall forthwith give notice to the railway or canal company of the execution of such absolute order, and of the deposit of such certificates with the commissioners, and thereupon the company shall make an entry or memorial in their register of shareholders with respect to such shares of the fact of such absolute order having been executed.

Notice thereof
to be entered
in register of
shareholders.

85. From the time of such notice, and during the whole term of the charge created by such absolute order, the person who for the time being shall be bound to make the periodical payments of such charge shall be entitled to the said shares, and if the same shall not at the time being be registered in his name, the person

Person liable
to pay charge
to be entitled
for the time
being to the
shares,

27 & 28
 Vict. c. 114,
 ss. 86—88.

registered as the holder thereof shall, as between himself and the person so entitled, hold them in trust for such last-mentioned person.

and to have
 them stand in
 his own name.

86. The person so for the time being entitled may at any time require the person registered as the holder of the said shares or his representatives to transfer to him the said shares, and such transfer shall thereupon be made accordingly, but at the expense in all respects of the transferee; and upon the production of such transfer duly stamped, and of a certificate by the commissioners under their hands and seal that the transferee is the person at the time being bound to make the periodical payments of the said charge, the railway or canal company shall register such transfer.

Rights and
 duties of per-
 sons regis-
 tered for the
 time being in
 respect of the
 shares.

87. With the exception of such transfers as may from time to time be made for the purpose of transferring the shares to the person so for the time being entitled thereto, the said shares shall not under any circumstances be transferred or disposed of by the registered holder, whether he be the person for the time being entitled thereto or not, during the term of the said charge; but during the term of such charge the registered holder for the time being of the said shares shall have all the other rights and powers of a shareholder in the railway or canal company in respect of the said shares; and the railway or canal company shall not be bound to see to the application of any dividend received by such registered holder, but as between himself and the person or persons for the time being entitled to such shares he shall hold any dividend which may be received by him in trust for the person who, at the time when such dividend became payable, was the person entitled to the said shares.

Entire shares
 to belong to
 parties in
 proportion to
 their pay-
 ments, and to
 be released to
 them from
 time to time.

88. Whenever any person or those whom he legally represents as their executor or administrator shall have been bound to make, and shall have made, such and so many periodical payments of the charge as to repay thereby principal money which, in proportion to the whole amount of principal money charged and the whole number of the said shares, shall correspond to any integral number of shares, with or without a fraction over, it shall be lawful for the commissioners, on the application of such person, made either during the term of the charge or within two years after its expiration, to certify that fact under their hands and seal, and by the same certificate to appropriate to such person certain specified shares to such integral number, and to deliver to him the corresponding share certificates; and upon the production to the railway or canal company of such certificate by the commissioners and share certificates, it shall be lawful for such person, if he shall not already be the registered holder, to require such shares to be transferred to him, and the railway or canal company shall make an entry or memorial on their register of shareholders of such shares being freed from the provisions of this Act, or of the term of the charge

having expired, as the case may be, and such shares shall thenceforward be held and transferred in the same manner as any other shares in the same company, but if the term of the charge shall not have expired the three last preceding sections of this Act shall still apply to the residue of the shares to which the same charge shall relate.

27 & 28
Vict. c. 114,
s. 89.

89. The shares composing the said residue shall at the end of two years after the expiration of the term of the charge belong to the person who shall have been bound to make the last periodical payment of the charge, or to his executors or administrators, on such payment being made: and the commissioners shall deliver to him or them the corresponding share certificates, and certify the title to the shares under their hands and seal in accordance with the above provision; and upon the production to the railway or canal company of the share certificates and such certificate by the commissioners, such person as aforesaid, or his executors or administrators, shall have the said shares transferred to him or them, so far as he or they shall not be already the registered holder or holders thereof; and the railway or canal company shall make an entry or memorial on their register of shareholders of the term of the charge having expired, and thenceforward the said shares shall be held and transferred in the same manner as any other shares in the same company.

Shares not
claimed
within two
years from
expiration of
term to belong
to person
bound to
make last
payment of
charge.

Sections 90 and 91 are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A.)

Provisional Order.

(Proper Heading.)

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, sanction the proposed improvements expressed upon the terms and conditions that such improvements be executed in the manner mentioned or specified in the said contract, and at an expense not exceeding the sum of and do hereby declare and provisionally order that it is right and proper, and for the benefit of the parties interested in the lands mentioned in the schedule hereto, that the inheritance or fee of such lands should be charged with the said sum of together with the costs, charges, and expenses preparatory or in relation to and consequent on the said contract and the application for this order, and that the same should, to the whole amount of such respective monies, [or should, to any amount not exceeding

27 & 28
Vict. c. 114,
Schedules.

as the case may be,] be charged in the manner following; (that is to say,) [here express how the amount is to be repaid with interest].

In witness whereof they have hereunto affixed their hands and seal, this day of in the year of our Lord one thousand eight hundred and .

SCHEDULE of lands provisionally charged.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.	Total Rental.

SCHEDULE (B.)

The Improvement of Land Act, 1864.

County of .
Parish of .
No. .

Absolute Order.

[Here insert name of landowner] of [here insert address].

Loan of pounds for the improvement of in the parish of in the county of .

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this absolute order under their hands and seal, charge the inheritance or fee of the lands mentioned in the schedule hereto with the payment to of the yearly sum of pounds shillings and pence, payable half-yearly on the day of and the day of in every year, for the term of years, and being a proportionate repayment, according to the table annexed, of the capital sum of pounds, with interest at per cent. per annum, the first half-yearly payment to be made on the day of .

Dated this day of 18 .

SCHEDULE of lands charged.

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Vict. c. 114,
Schedules.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £ per cent. per annum.

SCHEDULE (F.)

Vesting Order.

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, in consideration of £ to them paid by *A.B.* of transfer to and vest in the said *A.B.*, his executors, administrators, and assigns, shares of and in the railway or canal company, numbered , and now registered in the name of *C.D.*

In witness whereof they have hereunto affixed their hands and seal, this day of in the year one thousand eight hundred and .

THE RAILWAY COMPANIES' POWERS ACT, 1864.

27 & 28 VICT. c. 120.

**27 & 28
Vict. c. 120,
ss. 1, 2.**

An Act to facilitate in certain Cases the obtaining of further Powers by Railway Companies. [29th July, 1864.]

WHEREAS it is expedient that in certain cases railway companies be enabled to obtain further powers on complying with the conditions of a general Act of Parliament, without being obliged to procure in each case a special Act :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

Preliminary.

Short title.

1. This Act may be cited as "The Railway Companies' Powers Act, 1864."

Interpretation
of terms.

2. In this Act—

The term "railway" includes works connected with or for the purposes of a railway, and also a railway authorised to be but not actually constructed :

The term "railway bill" means a bill pending in or intended to be introduced into either House of Parliament, having for its object or one of its objects to authorise the making of a railway :

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, "The Companies Clauses Consolidation Act, 1845 ;" and so far as the same relates to Scotland, or to a certificate to be operative in Scotland, "The Companies Clauses Consolidation (Scotland) Act, 1845 ;" together with in each case "The Companies Clauses Act, 1863 :"

The term "the Board of Trade" means the Lords of the Committee for the time being of her Majesty's Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

Description of Cases within this Act.

27 & 28
Vict. c. 120,
ss. 3—6.

3. This Act shall take effect and apply in *each of the cases following; namely,

Act to apply
in cases
therein
named.

I.—Where a railway company are desirous that authority should be given to themselves and some other railway company or companies to enter into an agreement with respect to all or any of the matters following; namely,

* [And see the
cases men-
tioned in
31 & 32 Vict.
c. 119, s. 38.]

The maintenance and management of the railways of the companies respectively, or of any one or more of them, or of any part thereof respectively;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic;

The joint ownership, maintenance, management, and use of a station or other work; or the separate ownership, maintenance, management, and use of several parts of a station or other work:

II.—Where a railway company are desirous of obtaining an extension of the time limited for the sale by them of superfluous lands:

III.—Where a railway company incorporated by special Act or by certificate under "The Railways Construction Facilities Act, 1864," are desirous of obtaining authority to raise additional capital.

Application for Certificate.

4. In any such case the company, if desirous to obtain a certificate under this Act, shall proceed as follows; namely,

As to appli-
cation for
certificate by
company to
Board of
Trade.

(1.) They shall apply to the Board of Trade for a certificate under this Act:

(2.) They shall lodge at the office of the Board of Trade a draft of the certificate as proposed by them:

(3.) They shall publish notice of the application according to the general rules under this Act.

5. As soon as conveniently may be after the time for completion of the required notice, the Board of Trade shall proceed to inquire whether the company have complied with the requirements of the general rules respecting notice.

Said Board to
inquire if re-
quirements
have been
complied
with;

6. The Board of Trade, before settling a draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

and to con-
sider all re-
presentations
and objec-
tions.

[7 and 8 are repealed by 33 & 34 Vict. c. 19, s. 2.]

27 & 28
Vict. c. 120,
ss. 9—14.

Settlement of Draft Certificate.

Power to
Board of
Trade to settle
certificate ac-
cording to
nature of ap-
plication as
herein named.

9. Where the Board of Trade proceed on the application, then, on being satisfied that the company have complied with the requirements of the general rules respecting notice, they may, if they think fit, settle a draft of a certificate, certifying to the effect following; namely,

In the first-mentioned case, that the companies in the certificate specified are authorised to agree among themselves with respect to all or any of the matters aforesaid in the certificate specified;

In the secondly-mentioned case, that the time limited for the sale by the company of superfluous lands is extended as in the certificate specified;

In the thirdly-mentioned case, that the company are authorised to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

Insertion of
conditions in
certificate.

10. The Board of Trade may (subject to the provisions of this Act, and having regard to the provisions of any special Act relating to any company empowered by a certificate,) insert in the certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate, and the same shall be deemed to all intents part of the certificate.

Form of
certificate.

11. The certificate may be in the form set forth in the schedule to this Act, with such provisions as aforesaid.

Submission of Draft Certificate to Houses of Parliament.

Draft certifi-
cate to be
laid before
Houses of
Parliament.

12. The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament within seven days after the same is settled, if parliament is then sitting, or if not, then within seven days after the next meeting of parliament, but not later in any year than the first day of June.

Notice thereof
to be given.

13. On the draft certificate being settled the promoters shall give notice thereof according to general rules under this Act.

If either
House resolve
that certifi-
cate ought not
to be made, it
shall not be
proceeded
with.

14. If either House of Parliament within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House resolves that the certificate ought not to be made, the same shall not be further proceeded with.

Issue and Publication of Certificate.

27 & 28
Vict. c. 120,
ss. 15-22.

15. If neither House of Parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament has expired, the Board of Trade may make and issue a certificate in conformity with such draft.

If neither House resolve that certificate ought not to be made, Board of Trade may issue the same.

16. The certificate shall be published as follows; namely,
Where one company only is thereby empowered, then in the *London, Edinburgh, or Dublin Gazette*, according as the head office of the company is situate in *England, Scotland, or Ireland* :

Publication of certificate in *Gazette*.

Where two or more companies are thereby empowered, then in one or more of the *Gazettes*, according as the several head offices of the companies respectively are situate in *England, Scotland and Ireland*, respectively.

Effect of Certificate.

17. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed, then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with this Act) had been expressly enacted by parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any Court or elsewhere.

Operation of certificate as special Act.

18. The certificate shall be judicially noticed without being specially pleaded.

Judicial notice of certificate.

19. Terms used in the certificate shall have the same meanings as they have when used in this Act.

Interpretation of certificate.

20. There shall be incorporated with the certificate (which shall for this purpose be deemed the special Act)—

Parts of 26 & 27 Vict. co. 92 & 118, incorporated.

In the first-mentioned case, Part III. of the *Railways Clauses Act, 1863* ;

In the thirdly-mentioned case, the *Companies Clauses Acts*.

21. In the first-mentioned case, during the continuance of any agreement for the joint working of any two railways, in the calculation of tolls and charges for short distances in respect of traffic conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

Rule as to short distances.

22. It shall not be lawful for any company empowered by a certificate under this Act to issue any share created under the

Restriction as to issue of shares.

27 & 28
Vict. c. 120,
ss. 23, 24.

authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

Restrictions
 on company
 as to borrow-
 ing, &c.

23. In the thirdly-mentioned case the company, whether incorporated by special Act or by certificate, shall be subject to the following restrictions; namely,

- (1.) They shall not exercise any power of borrowing money under the certificate until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under section 40 of "The Companies Clauses Consolidation Act, 1845," or (in Scotland) to the sheriff, who is to certify under section 42 of "The Companies Clauses Consolidation (Scotland) Act, 1845," as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares are taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence):
- (2.) They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorised by the certificate:
- (3.) They shall not, out of money raised under the certificate by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made as is allowed by the Companies Clauses Acts):
- (4.) They shall not, out of money so raised, pay or deposit any money that may be required to be paid or deposited in relation to any application to parliament or the Board of Trade:
- (5.) They shall apply every part of the money so raised only for the purposes for which it is by the certificate authorised to be applied.

Miscellaneous.

Power to
 Board of
 Trade to re-
 spect applica-
 tion.

24. Nothing in this Act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case, if it appears to the Board of Trade for any reason that the application for a certificate should not be complied with.

25. Nothing in the certificate shall exempt any railway to which it relates, or the company to whom that railway belongs, from the provisions of any general Act of Parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken in respect of that railway.

27 & 28
Vict. c. 120,
ss. 25—31.

Nothing to exempt railways from operation of general Acts.

26. A certificate may be made under this Act and “The Railways Construction Facilities Act, 1864,” jointly, and in any such case the forms of certificate given in this Act and the said Act may be adapted to the circumstances of the case.

Certificate under this and Railways Construction Act.

27. Where, in case the company were proceeding by a railway bill instead of under this Act, the approval of the bill in any manner by the members of the company would be required under the standing orders of either House of Parliament for the time being in force, the Board of Trade shall not issue a certificate without being satisfied that the members of the company have in like manner approved of the application to the Board of Trade.

Approval by members of company required, as under standing orders.

28. Subject and according to the restrictions and provisions of this Act, the Board of Trade, on the application of the company, may from time to time amend, extend, or vary by certificate any certificate issued under this Act, and may by certificate revoke a previous certificate issued under this Act.

Power for Board of Trade to amend or revoke certificate.

29. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate or in relation thereto, the Board of Trade may, subject and according to the restrictions and provisions of this Act, on the application of the company, body, or person affected by the error, and on notice to the company or companies empowered by the certificate, correct the error by a further certificate.

Power to correct error.

30. A copy of the *London* or *Edinburgh* or *Dublin Gazette* containing a certificate or a copy of a certificate, purporting to be printed by the printers of the *London*, *Edinburgh* or *Dublin Gazette*, shall be conclusive evidence of the certificate and of the due publication thereof, without any proof of the *Gazette* or without any proof of the copy having been in fact so printed, as the case may be.

Proof of certificate.

31. Every company empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the *Gazette* or one of the *Gazettes* in which the same was published in such form as general rules direct, to be sold to all persons desiring to buy the same at a price not exceeding one shilling for each copy.

Copies of certificate for sale.

If any company fail to comply with this provision they shall be

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 Vict. c. 120,
 ss. 32—36.

liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

Application of
 Act to pro-
 prietors of
 railways
 generally.

32. The provisions of this Act relative to the first-mentioned case and to the secondly-mentioned case respectively shall extend and apply, *mutatis mutandis*, to the proprietors of a railway although not incorporated as a company.

Recovery and
 application of
 penalties.

33. Penalties under this Act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under "The Railways Clauses Consolidation Act, 1845," and "The Railways Clauses Consolidation (Scotland) Act, 1845," as the case may require, are recoverable and applicable.

Custody of
 documents.
 7 W. 4 & 1
 Vict. c. 83.

34. The Act of the session of the seventh year of King William the Fourth and the first year of her Majesty (chapter eighty-three), "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament," shall apply to documents required to be deposited by general rules under this Act.

General rules
 in schedule,
 with power
 for amend-
 ment.

35. The general rules under this Act shall in the first instance be those set forth in the Schedule to this Act; and the Board of Trade may from time to time, for the better execution of this Act, make general rules adding to, altering, or revoking any general rules for the time being in force under this Act; but any general rules so made by the Board of Trade, shall not have effect unless and until they are laid before both Houses of Parliament; and if either House of Parliament, within six weeks after the same are laid before that house, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof (as the case may be) shall not take effect; otherwise all rules made by the Board of Trade under the present section shall be of the same force and effect as if they had been comprised in the Schedule to this Act.

All general rules which are to take effect under the present section shall be published in the *London, Edinburgh and Dublin Gazettes*.

Annual report
 to Parliament
 by Board of
 Trade.

36. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past.

THE SCHEDULE REFERRED TO IN THE FOREGOING ACT.

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Vict. c. 120,
Schedule.

(I.) [*Repealed by 33 & 34 Vict. c. 19, s. 2.*]

(II.)—FORM OF CERTIFICATE OF BOARD OF TRADE.

The Railway Company.

Certificate of the Board of Trade for the extension of time
for sale of superfluous lands [*or as the case may be*].

Whereas the Railway Company have complied with the
requirements of "The Railway Companies' Powers Act, 1864":

Now, therefore, the Board of Trade do, by this their certificate,
in pursuance of the said Act, and by virtue and in exercise of the
powers thereby in them vested, and of every other power enabling
them in this behalf, certify as follows:

[*Here are to follow the provisions of the certificate showing the
powers conferred and the terms and conditions (if any) imposed.*]

(Signed) C. D.

The Board of Trade,
Whitehall.

Secretary to the Board of Trade.

Dated this day of .

(III.)—GENERAL RULES.

Form of Application.

1. The application to the Board of Trade for a certificate is to
be made by a memorial in writing under the common seal of the
company, lodged at the office of the Board of Trade.

2. Together with the memorial the company are to lodge a
printed draft of the certificate as proposed by the company.

Advertisements as to Application.

3. Notice of the application to the Board of Trade is to be given
by advertisement published as follows; namely,

In every case, once in each of three successive weeks in some
one and the same newspaper of the county, city, or town, or
county of a city or town, wherein the head office of the
promoters is situate:

In the case referred to in the foregoing Act as the first-men-
tioned case, once in each of three successive weeks in some
one and the same newspaper of each county, city, or town,
or county of a city or town, wherein the head office of any
railway company with whom the promoters propose to enter
into an agreement is situate:

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 Vict. c. 120,
 Schedule.

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county :

In every case where one company only is proposed to be empowered, then in the *London, Edinburgh, or Dublin Gazette*, according as the head office of the company is situate in England, Scotland, or Ireland :

In every case where two or more companies are proposed to be empowered, then in one or more of the *Gazettes*, according as the several head offices of the company respectively are situate in England, Scotland, and Ireland respectively.

4. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

5. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

6. Each advertisement is to state that all persons desirous of making to the Board of Trade any representation, or of bringing before them any objection, respecting the application, may do so by letter addressed to the Secretary of the Board of Trade on or before the first day of August or first day of January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

7. Within one week after the publication of the latest advertisement a copy of each of the newspapers and *Gazettes* containing the several advertisements is to be lodged at the office of the Board of Trade.

Notice to Landowners.

8. In the case referred to in the foregoing Act as the secondly-mentioned case, the promoters, in the month of June or in the month of November (as the case may be) in which the advertisements are published, are to serve notice of the application on the owners of lands adjoining to the lands to which the application relates.

Notice of Opposition.

9. Notice of opposition by a railway or canal company is to be lodged at the office of the Board of Trade, not later than the first day of August or first day of January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

10. On the draft certificate being settled by the Board of Trade the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person by whom any representation or objection respecting the application was made to or brought before the Board of Trade, and are also to give by advertisement or otherwise such

public or other notice (if any) thereof as according to the circumstances of the case the Board of Trade direct.

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Vict. c. 120,
Schedule.

Supply of Copies of Draft Certificate.

11. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than sixpence each.

12. From the time of the settlement of the draft certificate by the Board of Trade the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Printing of Certificate.

13. Copies of the certificate printed by the printers of a Gazette are to be printed on ordinary white folio paper, similar in size to the paper on which the public general Acts of Parliament are printed for public sale.

THE RAILWAYS CONSTRUCTION FACILITIES ACT, 1864.

27 & 28 VICT. c. 121.

**27 & 28
Vict. c. 121,
ss. 1, 2.**

An Act to facilitate in certain cases the obtaining of Powers for the Construction of Railways. [29th July, 1864.]

WHEREAS it is expedient to facilitate the making of branch and other lines of railway, and deviations of existing railways, and of railways in course of construction, and also the execution of new works connected with or for the purposes of existing railways:

And whereas the object aforesaid would be promoted if, where all landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the persons desirous of making or executing the same were enabled to obtain power to do so, on complying with the conditions of a general Act of Parliament, without being obliged to procure a special Act:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Preliminary.

Short title.

1. This Act may be cited as The Railways Construction Facilities Act, 1864.

Interpretation
of terms.

2. In this Act—

The term "Lands" includes any estate, right, or interest in lands:

The term "the promoters" means in each case the company or persons intending to apply to the Board of Trade for such a certificate as is hereinafter provided for, and, after the application is made, the company or persons actually making the application, as the case may require:

The term "the railway" means in each case the railway and works intended by the promoters before the issuing of the certificate, and, after the issuing thereof, the railway and works therein comprised, as the case may require:

The term "The Lands Clauses Acts" means, so far as the enactment in which that term is used relates to England, or

to a certificate to be operative in England, The Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, The Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Lands Clauses Consolidation Acts Amendment Act, 1860; and, so far as the same relates to Ireland, or to a certificate to be operative in Ireland, The Railways Act (Ireland), 1851, together with Acts incorporated in or amending that Act:

27 & 28
Vict. c. 121,
s. 3.

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, The Companies Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, The Companies Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Companies Clauses Act, 1863:

The term "the Railways Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, The Railways Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, The Railways Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Railways Clauses Act, 1863:

The term "railway bill" means a bill pending in or intended to be introduced into either House of Parliament, having for its object or one of its objects to authorise the making of a railway:

The term "the Board of Trade" means the Lords of the Committee for the time being of her Majesty's Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

Contracts for Lands.

3. Where promoters of a railway intend to apply, under this Act, for authority to make the railway, they and all parties seised or possessed of or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorised by a special Act of Parliament, are conferred by the Lands Clauses Acts on the promoters of the undertaking so authorised and on parties seised or possessed of or entitled to lands, or any estate, right, or interest in lands, required for that undertaking; all which powers and capacities shall be enjoyed and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if the promoters had obtained a special Act incorporating the Lands Clauses Acts, and authorising them to make the railway, and to purchase or take the

Power for promoters of railway and all persons interested in land to enter into provisional contracts for land required.

27 & 28
Vict. c. 121,
s. 4.

lands required for the same ; subject, nevertheless, to the following restrictions and provisions ; namely,

- (1.) Nothing herein shall confer on the promoters and parties aforesaid any of the powers or capacities conferred by the part of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those Acts with respect to the entry upon lands by the promoters of the undertaking, or by such provisions of those Acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (except only as to such of those provisions as provide for the determination of the amount of compensation to be paid for enfranchisement of copyholds ; and for the purposes of the present section, section 96 of The Lands Clauses Consolidation Act, 1845, relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom) :
- (2.) Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the Lands Clauses Acts, as applied by the present section, shall have capacity only to contract with the promoters for the sale of those lands, and shall not (before such a certificate of the Board of Trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this Act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands :
- (3.) The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this Act only to contract for lands, and they shall not have capacity, further or otherwise than if this Act had not been passed, to take or hold lands.

Contracts for
 sale of lands
 belonging to
 the Crown or
 Duchy of
 Lancaster or
 Cornwall.

4. Where lands required for the railway belong to or are enjoyed by her Majesty the Queen, her heirs or successors, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, any contract for the purposes of this Act may be entered into in respect of those lands, as follows ; namely—

In the first mentioned case, by the Commissioners of her Majesty's Woods, Forests, and Land Revenues, or one of them, with the consent of the Commissioners of her Majesty's Treasury :

In the secondly mentioned case by the chancellor of the duchy by writing under his hand attested by the clerk of the council of the duchy :

In the thirdly mentioned case, by the Duke of Cornwall or

other the persons for the time being empowered to dispose for any purpose of lands of the duchy.

27 & 28
Vict. c. 121,
ss. 5—11.

5. Notwithstanding anything in this Act, it shall not be necessary for the promoters, before applying under this Act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway; but the Board of Trade before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto.

User of or
interference
with public or
turnpike
roads.

Application for Certificate.

6. When the promoters have contracted for the purchase of all the lands required for the railway, and are desirous of obtaining a certificate under this Act, they shall proceed as follows; namely—

After land
contracted
for, power for
promoters to
apply for
certificate,
publish
notices, &c.

- (1.) They shall apply to the Board of Trade for a certificate under this Act:
- (2.) They shall deposit maps, plans, sections and books of reference, and an estimate of the expense of the construction of the railway, and lodge a draft of the certificate as proposed by them, according to the general rules under this Act:
- (3.) They shall publish notice of the application according to such general rules.

7. As soon as conveniently may be after the time for completion of the required deposit and notice, the Board of Trade shall proceed to inquire in such manner and to such extent as shall appear to them sufficient, whether the promoters have contracted for the purchase of all the lands required for the railway, and to inquire whether the promoters have complied with the requirements of the general rules respecting deposit and notice.

Consideration
of application
by Board of
Trade.

8. The Board of Trade, before settling the draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Board of
Trade to con-
sider all
representa-
tions and ob-
jections.

[9 and 10 are repealed by 33 & 34 Vict. c. 19, sec. 2.]

Settlement of Draft Certificate.

11. Where the Board of Trade proceed on the application, then on being satisfied that the promoters have contracted for the purchase of all the lands required for the railway, and have complied with the requirements of the general rules respecting deposit and

Power to
Board of
Trade to settle
certificate.

27 & 28
Vict. c. 121,
ss. 12—19. — notice, they may, if they think fit, settle a draft of a certificate, certifying to the effect that the company, or persons therein specified, are authorised to make the railway therein described.

Insertion of conditions in certificate. **12.** The Board of Trade may (subject to the provisions of this Act) insert in the draft certificate such provisions, as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate; and the same shall be deemed to all intents part of the certificate.

Form of certificate. **13.** The certificate may be in the form set forth in the schedule to this Act, with such provisions as aforesaid.

Submission of Draft Certificate to Houses of Parliament.

Draft certificate to be laid before Houses of Parliament. **14.** The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament, within seven days after the same is settled, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, but not later in any year than the first day of June.

Notice thereof to be given. **15.** On the draft certificate being settled the promoter shall give notice thereof according to general rules under this Act.

If either House resolve that certificate ought not to be made, it shall not be proceeded with. **16.** If either House of Parliament within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House, resolves that the certificate ought not to be made, the same shall not be further proceeded with; and in that case all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

Issue, Publication, and Effect of Certificate.

If neither House resolve that certificate ought not to be made, Board of Trade may issue the same. **17.** If neither House of Parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament has expired, the Board of Trade may make and issue a certificate in conformity with such draft.

Publication of certificate in Gazette. **18.** The certificate shall be published in the *London* or *Edinburgh* or *Dublin Gazette*, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland; and shall be published both in the *London* and in the *Edinburgh Gazette* if the railway will be situate partly in England and partly in Scotland.

Operation of certificate as special Act. **19.** As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with

this Act) had been expressly enacted by Parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court or elsewhere.

27 & 28
Vict. c. 121,
ss. 20—28.

20. The certificate shall be judicially noticed without being specially pleaded.

Judicial
notice of
certificate.

21. Terms used in the certificate shall have the same meanings as they have when used in this Act.

Interpretation
of certificate.

Duration of Powers under Certificate.

22. If the company, or persons by the certificate empowered to make the railway do not within five years from the commencement of the operation of the certificate, or within any shorter period prescribed therein, complete the railway and open it for public traffic, then (subject to any provisions and qualifications in the certificate contained) all the powers and authorities given by the certificate shall, from and after the expiration of the time aforesaid, cease, except as to so much of the railway as is then completed.

Cesser of
powers at
expiration of
prescribed
time.

Lands.

23. The Lands Clauses Acts shall be incorporated with the certificate (which shall for this purpose be deemed the special Act) except as may be therein excepted, and except as to the following provisions; namely,

Incorporation
of Lands
Clauses Acts
in certificate,
except provisions
giving
compulsory
powers, &c.

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking:
- (3.) So much of those Acts as provides for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (but excluding from this exception so much of those Acts as provides for the determination of the amount of compensation to be paid for enfranchisement of copyholds).

Incorporation of Company.

24. Where the promoters are not a company incorporated by special Act, or by previous certificate under this Act, and are seven or more in number, a company shall be incorporated by the certificate, for the purposes thereof.

In what cases
company shall
be incorpo-
rated.

25. Where the promoters are not a company incorporated by special Act, or by previous certificate under this Act, and are less than seven in number, a company may be incorporated by the certificate for the purposes thereof, if the promoters so desire.

In others
company may
be incorpo-
rated.

26. Where the certificate incorporates a company, it shall contain proper provisions with apt terms for creating a body corpo-

Power for
Board of
Trade to in-

27 & 28
Vict. c. 121,
ss. 27-28.

incorporate
 company by
 certificate.

rate, by an appropriate name, with perpetual succession and a common seal, and with power to take, hold, and dispose of lands and other property, for the purposes and subject to the restrictions of the certificate, and may confer on the company power to borrow on mortgage, and all other usual or proper powers.

Incorporation
 of Companies
 Clauses Acts.

27. In every such case, the Companies Clauses Acts shall be incorporated with the certificate (which shall be deemed the special Act).

Restriction as
 to issue of
 shares.

28. It shall not be lawful for any company empowered by a certificate under this Act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

Restrictions
 on company
 as to borrow-
 ing, &c.

29. Every company, whether incorporated by special Act or by certificate, empowered by a certificate to borrow money, shall, as regards the money so authorised to be borrowed, be subject to the following restrictions; namely,

- (1.) They shall not exercise the said powers of borrowing any money until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one half thereof is actually paid up, and until they prove to the justice who is to certify under section 40 of The Companies Clauses Consolidation Act, 1845, or (in Scotland) to the sheriff who is to certify under section 42 of The Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence):
- (2.) They shall not borrow a larger sum in the whole than one third of the amount of the share capital authorised by the certificate:
- (3.) They shall not out of money raised under the certificate by calls or borrowing pay interest or dividend to a shareholder on the amount of calls made on his shares; whether created under the certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made, as is allowed by the Companies Clauses Acts):
- (4.) They shall not out of money so raised pay or deposit any

money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade :

27 & 28
Vict. c. 121,
s. 30.

- (5.) They shall apply every part of the money so raised only for purposes for which it is by the certificate authorised to be applied.

30. Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company. Contracts by promoters binding on company.

In cases not within this section, there appears to be some doubt whether agreements entered into between the promoters of the undertaking and landowners before the passing of the Act, in consideration of the withdrawal of the landowners' opposition, are binding. The decisions appear to go to this :—

An agreement to pay a landowner a sum of money in consideration of his not opposing a bill in Parliament is *ultra vires* of the company, but it is not illegal, though the landowner may be a peer, unless it is shown that the money was for the purpose of influencing his vote (*Preston v. Liverpool, &c., Ry. Co.*, 5 H. L. 605; *Stanley v. Chester, &c., Ry. Co.*, 1 R. C. 58; 3 M. & Cr. 773; *Edwards v. Grand Junction Ry. Co.*, 1 R. C. 173; 1 M. & Cr. 650; *Simpson v. Lord Howden*, 1 R. C. 326; 9 Cl. & F. 61; *Petre v. E. Counties Ry. Co.*, 1 R. C. 462; *E. Counties Ry. Co. v. Hawkes*, 5 H. L. 331; *Earl of Shrewsbury v. N. Staffordshire Ry. Co.*, 1 Eq. 593).

Where the landowner is not absolutely entitled to the land, he must hold the sums paid for the withdrawal of opposition as trustee for the inheritance (*Pole v. Pole*, 2 Dr. & Sm. 420; *Earl of Shrewsbury v. N. Staffordshire Ry. Co.*, 1 Eq. 593; 35 L. J. Ch. 156; 13 L. T. N. S. 648; *Taylor v. Chichester & Midhurst Ry. Co.*, L. R. 4 H. L. 628).

An existing company, which is about to promote a new line, may enter into a contract that it will, upon the passing of the Act, take and pay for certain lands for the purpose of the new line, whether the land is actually required or not, and when the Act passes, it will be bound by the contract, which may be specifically enforced (*E. Counties Ry. Co. v. Hawkes*, 5 H. L. 331; *Taylor v. Chichester, &c., Ry. Co.*, L. R. 4 H. L. 628). Agreement by existing company promoting a bill.

Such a contract may be enforced after the compulsory powers of the company have been determined, the company being already, in equity, owners of the land (*Webb v. London & Portsmouth Ry. Co.*, 9 Ha. 140).

But if the price to be paid by the company is so large as to amount to a bribe to buy off opposition, it would seem the contract would be *ultra vires*, and not enforceable (*Preston v. Liverpool, &c., Ry. Co.*, 5 H. L. 605. *Petre v. E. Counties Ry. Co.*, 1 R. C. 462, is probably overruled).

If the contract is, that the company are only to take the land if they require it, specific performance can, of course, only be enforced if the land is required (*Gage v. Newmarket Ry. Co.*, 7 R. C. 168; 18 Q. B. 457; 21 L. J. Q. B. 398. *Gooday v. Colchester, &c., Ry. Co.*, 17 B. 132, may be supported on this ground, if at all; *Preston v. Liverpool, &c., Ry. Co.*, 5 H. L. 605; *Scottish N. E. Ry. Co. v. Stewart*, 3 Macq. 382). Contract conditional upon land being wanted.

And in some cases the contract has been held too vague to be enforceable (*Stuart v. L. & N. W. Ry. Co.*, 1 D. M. & G. 721; 21 L. J. Ch. 450; 16 Jur. 531; *S. Wales Ry. Co. v. Wythes*, 5 D. M. & G. 880; 24 L. J. Ch. 87; *Webb v. Direct London & Portsmouth Ry. Co.*, 21 L. J. Ch. 337; 16 Jur. 323; 1 D. M. & G. 521).

But a contract *ultra vires* when it is made, where the company subsequently acquire powers to enter into similar contracts, will not bind the company if it is entered into in such a manner that the company would not have been bound had it been *infra vires*.

Where a provisional agreement for a purchase has been entered into which is *ultra vires*, and the directors do not undertake to bind the company when an enabling Act shall have been passed, a subsequent Act authorising and requiring the purchase to be carried out upon terms to be agreed upon, but not referring to the provisional agreement, does not make the provisional agreement binding, notwithstanding acts of part performance by the vendors (*Leominster Canal Co. v. Shrewsbury, &c., Ry. Co.*, 3 K. & J. 654; 26 L. J. Ch. 764).

Promoters who before the Act passes enter into a contract which is *ultra vires* of the incorporated company cannot bind the company (*Caledonian, &c., Ry. Co. v.*

Contract *ultra vires* of incorporated company.

27 & 28
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s. 30.

Ratification of
contract
before incor-
poration.

Magistrates of St. Helensburgh, 2 Macq. 391; *Earl of Shrewsbury v. N. Staffordshire Ry. Co.*, 1 Eq. 593. *Petre v. E. Counties Ry. Co.*, 1 R. C. 462, if and so far as it decides the contrary, is overruled).

A contract entered into by promoters on behalf of a contemplated company is not capable of being ratified by the incorporated company (*Kilner v. Baxler*, L. R. 2 C. P. 174; *Melhado v. Porto Alegre Ry. Co.*, L. R. 9 C. P. 503; *In re Empress Engineering Co.*, 16 Ch. D. 125; *In re Northumberland Avenue Hotel Co.*, 33 Ch. D. 16).

The company may, of course, after incorporation enter into an agreement on the terms of the earlier agreement, or may by its conduct become equitably bound by its terms (see *Touche v. Metr. Ry. Warehousing Co.*, 6 Ch. 671; *Spiller v. Paris Rink Co.*, 7 Ch. D. 368; *In re Northumberland Avenue Hotel Co.*, 33 Ch. D. 16; and see *Earl of Lindsey v. Gt. N. Ry. Co.*, 10 Ha. 664; *Edwards v. Grand Junction Ry. Co.*, 1 M. & Cr. 650; *Stanley v. Chester, &c., Ry. Co.*, 3 M. & Cr. 773; 1 R. C. 58; *Bedford, &c., Ry. Co. v. Stanley*, 2 J. & H. 746).

As to whether a contract entered into with promoters of a company will be binding on an amalgamated company or on a rival company which has taken over the first company's liabilities, see *Stanley v. Chester, &c., Ry. Co.*, 3 M. & Cr. 773; *Greenhalgh v. Manchester, &c., Ry. Co.*, 9 Sim. 416; 3 M. & Cr. 784; *Preston v. Liverpool, &c., Ry. Co.*, 1 Sim. N. S. 586; *Earl of Lindsey v. Gt. N. Ry. Co.*, 10 Ha. 664; *Hacker v. Mid-Kent Ry. Co.*, 12 L. T. N. S. 699.

When promoters personally liable.

It would seem that promoters entering into an agreement on behalf of a proposed company are personally liable, though the agreement may be ratified by the company, or though the agreement may be to repay a sum of money out of the calls on shares (*Kilner v. Baxler*, L. R. 2 C. P. 174; *Scott v. Lord Ebury*, L. R. 2 C. P. 255).

Where the contract entered into by the promoters amounts to an absolute agreement on their part, that the company will take and pay for the land if the vendor supports the bill and it passes into law, then, upon the performance of these conditions, the vendor may maintain an action for damages against the promoters, if from any circumstance the company fail to carry out the agreement (*Bland v. Crowley*, 6 Exch. 522; 20 L. J. Ex. 18; *Capper v. Earl of Lindsey*, 3 H. L. C. 293).

As to restraining a company from applying to Parliament to be relieved from such contracts, see notes to s. 65 of the Companies Clauses Act, 1845, *ante*.

Liability of
provisional
committee.

With regard to the liability of the provisional committee where the company proves abortive, the following rules may be laid down:—

Where a person pays to a provisional committee a sum as a deposit upon shares to be allotted to him in a projected undertaking, and the undertaking proves abortive, he may recover the whole sum from a member of the committee, unless it can be shown that he has consented to or acquiesced in the application of the deposits towards the expenses of the undertaking (*Walstab v. Spottiswoode*, 15 M. & W. 501; 16 L. J. Ex. 193; *Moore v. Garwood*, 19 L. J. Ex. 15; *Ashpitel v. Sircombe*, 19 L. J. Ex. 82).

Payment of
costs out of
deposit.

The contract should therefore provide for the application of the deposits in payment of preliminary expenses, in which case the promoters will not be liable, if the money is properly applied (*Garwood v. Ede*, 17 L. J. Ex. 29; 1 Ex. 264; *Clement v. Todd*, 17 L. J. Ex. 31; 1 Ex. 268; *Jones v. Harrison*, 17 L. J. Ex. 132; *Willey v. Parrat*, 18 L. J. Ex. 82; *Watts v. Salter*, 20 L. J. C. P. 43; 10 C. B. 476; *Londesborough v. Mowatt*, 23 L. J. Q. B. 38, 177; 4 E. & B. 1. See *Ex parte Londresborough*, *In re Dover, Deal & Cinque Ports Ry. Co.*, 22 L. J. Ch. 736; 4 D. M. & G. 411; *Millett v. Browne*, 27 L. J. Ex. 256; 2 H. & N. 837; *Aldham v. Brown*, 29 L. J. Q. B. 33; 7 E. & B. 164).

A member of the provisional committee who, though his name appears on the prospectus as chairman, is no party to the proceedings resulting in application for shares, cannot be made liable (*Burnside v. Dayrell*, 19 L. J. Ex. 46).

Depositor
suing on
behalf of
himself and
others.

It would seem that a depositor may maintain an action on behalf of himself and the other depositors against the committee to recover the deposit, where there is an account to be taken of what has been properly applied in payment of expenses (*Apperly v. Page*, 16 L. J. Ch. 100, 302; 1 Phil. 779).

And such an action may, of course, be maintained where fraud is alleged (*Cridland v. Lord de Mauley*, 17 L. J. Ch. 190; 1 De G. & S. 459).

But where there is no account and no fraud—for instance, where the depositor claims to recover his whole deposit on the ground that the undertaking is abortive—it would seem a representative action cannot be maintained (*Moseley v. Cressey's Co.*, 1 Eq. 405, where the head-note appears not to be borne out by the judgment; *Denton v. Macneil*, 2 Eq. 352; *Stewart v. Austin*, 3 Eq. 299; *Ship v. Crosskill*, 10 Eq. 73).

A statement that deposits will be returned if no allotment is made gives the

depositees no lien or charge upon the money deposited (*Moseley v. Cressey's Co.*, 1 Eq. 405).

27 & 28
Vict. c. 121,
ss. 31—33.

With regard to the liability of provisional committeemen for work done with a view to the undertaking, such as printing, advertising, &c., the mere fact that a person has consented to join the committee involves him in no liability. In order to make him liable it must be shown that the work has been done under a contract with him or his authorised agent (*Bailey v. Macaulay*, 19 L. J. Q. B. 73; 15 Q. B. 533; *Reynell v. Lewis*, 16 L. J. Ex. 25; 15 M. & W. 517; *Wilson v. Curzon*, 16 L. J. Ex. 122; 15 M. & W. 532. See *Maddick v. Marshall*, 17 C. B. N. S. 829; *Riley v. Packington*, L. R. 2 C. P. 536).

Promoters are
not partners.

A promoter can maintain an action for contribution against his co-promoters, only, if he is willing that an account should be taken of the expenses of all the promoters (*Denton v. Maencil*, 2 Eq. 352).

An agreement to indemnify a provisional committeeman against all costs and expenses incurred in the formation of the company will not cover the costs of an action improperly brought against him as a member of the committee (*Lewis v. Smith*, 19 L. J. C. P. 278).

A person contracting with a provisional committee may, of course, agree that the committee shall not be personally liable, and that he shall be paid out of funds of the company, in which case, if there are no funds out of which he can be paid, he cannot sue the committee (*Laudaman v. Entwistle*, 21 L. J. Ex. 208; 7 Ex. 632).

Agreement to
look to com-
pany for pay-
ment.

The amount recoverable as contribution by one committeeman against others jointly liable is the sum paid divided by the whole number of persons originally liable, and not by the number of survivors liable when the sum was paid (*Bastard v. Hawes*, 22 L. J. Q. B. 443; 2 E. & B. 287).

Construction of Railway.

31. The Railways Clauses Acts shall be incorporated with the certificate (which shall be deemed the special Act), except as may be therein excepted, and except as to the following provisions; namely,

Incorporation
of Railways
Clauses Acts
in certificate,
except as to
compulsory
powers, &c.

- (1.) Such of the provisions with respect to the construction of the railway and the works connected therewith as relate to the correction of errors and omissions in plans or to plans and sections of alterations:
 - (2.) With respect to the temporary occupation of lands near the railway during the construction thereof:
 - (3.) With respect to leasing the railway:
- and subject to the following provisions; namely,

- (1.) Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement:
- (2.) Any provision referring to the datum line described in the section approved of by Parliament shall be read as referring to the datum line described in the section approved of by the Board of Trade.

32. Where the promoters desire to make any alteration in the deposited plan or section, they may do so with the consent of the Board of Trade; but the Board of Trade shall not settle a draft of a certificate without being satisfied that all parties interested in lands liable to be affected by or in consequence of the alteration consent thereto.

Restriction on
alterations of
plan or sec-
tion.

[**33.** relating to the gauge of railways, is repealed by 33 & 34 Vict. c. 19, s. 5].

27 & 28 Vict.
c. 121,
ss. 34—38.

Promoters to
deposit eight
per cent. on
estimate in
Court of
Chancery, &c.

Provisions to secure Completion of Railway.

34. After the certificate is ready to be issued, and before the same is issued, by the Board of Trade, the promoters, unless they are a previously existing company possessed of a railway open for public traffic, shall, within such time as general rules under this Act direct, pay as a deposit a sum of money not less than eight per centum on the amount of their estimate of the expenses of the construction of the railway, as follows; namely,

Where the railway or any part thereof will be situate in England,—into the Bank of England, in the name and with the privy of the accountant general of the Court of Chancery in England :

Where the railway will be situate wholly in Scotland,—either into the Bank of England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by Act of Parliament or royal charter, in the name and with the privy of the Queen's Remembrancer of the Court of Exchequer in Scotland :

Where the railway will be situate in Ireland,—into the Bank of Ireland, in the name and with the privy of the accountant general of the Court of Chancery in Ireland.

Warrant of
Board of
Trade for
payment into
court.

35. The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the persons therein named, or the majority or survivors of them, to pay the money therein mentioned into the bank therein mentioned, in the name and with the privy of the officer therein mentioned, and for that officer to receive the same, to be placed to his account there *ex parte* the railway therein mentioned, according to the method (prescribed by statute, or general rules or orders of court, or otherwise), for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

Liberty for
promoters to
bring in
exchequer
bills, &c.

36. Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective court is for the time being permitted to be invested, or of exchequer bills, (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase); and in that case the Board of Trade shall vary their warrant accordingly.

Provision for
vacations in
offices of
courts.

37. At any time when the office of the accountant general of the Court of Chancery in England or Ireland is closed, a deposit under this Act may nevertheless be made, in such manner as general orders of the respective courts authorise and direct.

Power for
court to direct
investment.

38. Where money is so paid into the Court of Chancery in England or Ireland, the court may, on the application of the

persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the court thinks fit.

27 & 28 Vict.
c. 121,
ss. 39—41.

39. In the subsequent provisions of this Act, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or exchequer bills deposited, as the case may be: and the term "the depositors" means the persons named in the warrant of the Board of Trade authorising the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

Interpretation
of "Deposit
fund" and
"Depositors"
in following
provisions.

40. The court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid, transferred, or delivered out to the applicants, or as they direct, in any of the following events; namely,

Repayment of
deposit on
completion of
railway or on
terms.

- (1.) If, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company, or persons thereby empowered to make the railway, complete it and open it for public traffic; or
- (2.) If, within the same time, they (being a company) prove to the satisfaction of the Board of Trade that one-half of their nominal capital authorised by the certificate is paid up, and that they have expended a like amount for the purposes of the certificate; or
- (3.) If, at any time after the issuing of the certificate, they execute and deliver to the solicitor of her Majesty's treasury a bond with a surety or sureties (such bond being prepared to the satisfaction of, and such surety or sureties being approved by, the said solicitor) in a penal sum of twice the amount of the money required to be deposited, conditioned to the effect following, namely,—for payment to her Majesty, her heirs or successors, of the amount of the money required to be deposited, if the company or persons empowered by the certificate do not, within the time aforesaid, either complete the railway and open it for public traffic, or (being a company) give such proof as aforesaid respecting their capital and expenditure.

Where the scheme has become abortive owing to the impossibility of passing the Act during the session, the money will be paid out, though the case is not provided for by the Act (*In re Widnes Ry. Co.*, 15 Eq. 108; 42 L. J. Ch. 352).

41. If the company, or persons empowered by the certificate to make the railway do not, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, do one or other of the following things, namely,—

Forfeiture of
deposit on
non-comple-
tion of rail-
way, &c.

- (1.) complete the railway and open it for public traffic; or

27 & 28 Vict.
c. 121,
ss. 42—47.

- (2.) give (being a company) such proof as hereinbefore mentioned respecting their capital and expenditure; or
 (3.) execute and deliver such a bond as is hereinbefore described,—

then and in every such case the deposit fund shall, from and after the expiration of the time aforesaid, be forfeited to her Majesty, and shall accordingly be paid, transferred, or delivered out to or for the account of her Majesty's Exchequer, in such manner as the court in which the deposit is made thinks fit to order, on the application of the solicitor of her Majesty's Treasury, on notice to such parties (if any) as the court thinks fit: and the deposit fund, when so paid, transferred, or delivered, or the proceeds thereof, shall be carried to and form part of the consolidated fund of the United Kingdom.

Application of
 money re-
 covered on
 bond.

42. Where any such bond as aforesaid is given, the amount recovered thereon shall be paid to the account of her Majesty's Exchequer, and shall be carried to and form part of the said consolidated fund.

Depositors to
 receive divi-
 dends accru-
 ing while
 fund in court.

43. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly.

Proof as to
 capital and
 expenditure,
 execution of
 bond, &c.

44. The certificate of the Board of Trade that such proof as aforesaid respecting the capital and expenditure of any company has been given to the satisfaction of the Board of Trade, and the certificate of the solicitor of her Majesty's Treasury that such bond as aforesaid has in any case been prepared, executed, and delivered to his satisfaction, shall respectively be sufficient evidence of the matters therein certified.

Protection to
 Board of
 Trade in case
 of error, &c.

45. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

Mode of ap-
 plication to
 courts.

46. Any application under this Act to the Court of Chancery in England or Ireland shall be made in a summary way in such manner as general orders of those courts respectively direct.

Power for
 courts to
 make general
 orders.

47. The Lord Chancellor of Great Britain with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery and the Master of the Rolls and the Vice-Chancellors, or any two of those judges, and the Lord Chancellor of Ireland with the

advice and assistance of the Lord Justice of the Court of Appeal in Chancery in Ireland and of the Master of the Rolls in Ireland, may respectively from time to time make such general orders as seem fit for the regulation of the practice under this Act of the Court of Chancery in England and Ireland respectively.

27 & 28 Vict.
c. 121,
ss. 48—51.

48. Where a certificate is obtained by a previously existing company possessed of a railway open for public traffic, then, if the company fail to complete the railway and open it for public traffic within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company shall be liable to a penalty of not less than twenty pounds and not exceeding fifty pounds for every day during which such failure continues, except only in respect of any time during which it appears from a certificate of the Board of Trade that the company were prevented from completing the railway or opening it for public traffic by unforeseen accident or circumstances beyond their control, but the want of sufficient funds shall not be deemed a circumstance beyond their control within the meaning of this provision.

Penalty on company failing to open new railway in certain cases.

Tolls and Charges for Use of Railway.

49. The proprietors of the railway may demand and take, in respect of the railway, tolls and charges not exceeding the sums specified in the schedule to this Act, subject and according to the regulations therein specified.

Tolls, &c. in schedule.

50. The Board of Trade may nevertheless by the certificate vary the tolls and charges and regulations specified in the schedule to this Act, or any of them, if in any case it seems to them necessary or proper, under the circumstances, to do so.

Power for Board of Trade to vary tolls, &c.

Application of General Railway Acts.

51. The enactments described in the schedule to this Act, and any enactments amending, perpetuating, or otherwise affecting any of them, so far as the same are in force at the passing of this Act, shall extend and apply, as the case may require, to the railway, and to the company or persons empowered by the certificate to make the railway, and shall in all respects operate in relation thereto respectively as if they were expressly repeated and re-enacted in this Act, subject, nevertheless, and according to the following variations and provisions; namely,

Enactments in schedule applied to the railway and company, subject to variations.

- (1.) For the purposes and within the meaning of any of those enactments, the railway shall be deemed to be a railway made and constructed and carried on under the authority of Parliament and under the powers and provisions of an Act of Parliament, and the certificate (taken in conjunction with this Act), shall be deemed to be a special Act of Parliament regulating or relating to the railway, or

27 & 28 Vict.
c. 121, s. 51.

- the company, body, or persons empowered to make the same (as the case may require) :
- (2.) Such of those enactments as refer to the time of the passing of an Act of Parliament for the construction of a railway, or to the last day of the session in which such an Act is passed, shall respectively be read and have effect as referring to the time of the commencement of the operation of the certificate :
 - (3.) The terms "company" and "railway company" used in any of those enactments shall respectively include any person empowered by the certificate to make the railway :
 - (4.) Such of those enactments as refer to the directors, or any director, or the secretary, chief, or other clerk, accountant, treasurer, or other officer of a company, shall extend and apply to every or any one of the persons (not being a company), empowered by the certificate to make the railway :
 - (5.) Such of those enactments as refer to a writing under the common seal of the company shall be read and have effect as referring to a writing under the hand and seal of any one of such persons, as aforesaid :
 - (6.) Such of those enactments as impose any penalty or forfeiture, or any pecuniary liability or any obligation, on a company, or give any right, remedy, or process against a company, shall be read and have effect (so far as the nature and circumstances of the case admit) as imposing a like penalty, forfeiture, liability, or obligation on, or as giving a like right, remedy, or process against, every or any one of such persons, as aforesaid, but not so as to authorise the recovery of any penalty or forfeiture from, or the enforcement of any pecuniary liability against, more than one of such persons in respect of the same offence, matter, or thing :
 - (7.) The amount of any compensation to be made to the owners and occupiers of any lands for loss or injury or inconvenience sustained by them respectively by reason of any works done under the authority of any of those enactments shall, in case of dispute, be settled in manner directed by the Lands Clauses Acts and the Railways Clauses Acts as respectively applicable to the case :
 - (8.) Such of those enactments as provide for the case of the Board of Trade certifying that the public safety requires additional land to be taken by a company for the purpose of giving increased width to the embankments or inclination to the slopes of the railway, or for making approaches to bridges or archways, or for doing works for the repair or prevention of accidents or slips happening or apprehended to the cuttings, embankments, or other works of the railway, shall be read and have effect, as regards such portions of land as are mentioned in any certificate so

given by the Board of Trade, as if compulsory powers of purchasing and taking lands had been contained in the certificate under this Act authorising the making of the railway, and the provisions of the Lands Clauses Acts and the Railways Clauses Acts relative to the compulsory purchase or taking of land had been incorporated with that certificate :

27 & 28 Vict.
c. 121,
ss. 52—55.

- (9.) If the railway is in any respect constructed contrary to the provisions of the certificate, or of this Act, it shall be deemed to be constructed contrary to the provisions of any of those enactments applicable in the case :
- (10.) Nothing herein shall extend or make applicable, for the purposes of this Act, to or in any one of the parts of the United Kingdom, any of those enactments not in force there independently of this Act.

Miscellaneous.

52. Nothing in this Act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case if it appears to the Board of Trade for any reason that the application of the promoters should not be complied with : and in case the Board of Trade reject any application, all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

Board of Trade may reject the application.

53. Nothing in the certificate shall exempt the railway, or the company, or person to whom it belongs, from the provisions of any general Act of Parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken under the certificate.

Saving for general Acts, or revision of charges.

54. All the provisions of this Act which relate to the making of a railway shall extend and apply, *mutatis mutandis*, to the making or executing of any work connected with or for the purposes of a railway (as distinguished from the construction of a railway).

New works in connexion with railway.

55. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application or on two or more separate applications, issue a certificate empowering two or more companies, or persons, respectively, to jointly make or execute the whole, or to separately make or execute parts, of a work connected with or for the purposes of a railway, and to jointly or separately use the whole or parts thereof ; and all the provisions of this Act which relate to the making of a railway, or the making or executing of a work, shall extend and apply to the making or executing of the whole or separate parts of such work as last aforesaid ; and the form of the certificate may be adapted to the circumstances of the case.

Power to authorise joint work.

37 & 38 Vict.
c. 121,
ss. 56—61.

Power to
promoters
being a com-
pany, to raise
additional
capital.

56. Where the certificate is obtained by a previously existing company incorporated by special Act or by certificate, the certificate may authorise the company to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

In every such case the Companies Clauses Acts shall be incorporated with the certificate.

In every such case the restrictions by this Act imposed on a company when originally incorporated by a certificate, with respect to the exercise of their borrowing power and to the application of money raised under the certificate by calls or borrowing, shall extend and apply to such previously existing company in respect of such additional capital.

Where pro-
motors are a
company, ap-
proval of ap-
plication by a
meeting.

57. Where the certificate is obtained by a previously existing company incorporated by special Act or by certificate, it shall be the duty of the Board of Trade not to settle a draft of the certificate without being satisfied that the members of the company have approved of the application to the Board of Trade, in like manner as, under the standing orders of either House of Parliament for the time being in force, their approval of a railway bill would be required to be given in the same case.

Power to
Board of
Trade to
amend or re-
voke certi-
ficate.

58. Subject and according to the restrictions and provisions of this Act, the Board of Trade, on the application of any company or persons empowered by a certificate, may from time to time amend, extend, or vary by certificate the previous certificate, and may by certificate revoke the previous certificate.

Power to
correct error.

59. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate or in relation thereto, the Board of Trade may, subject and according to the restrictions and provisions of this Act, on the application of any company, body, or person affected by the error, and on notice to the company or persons empowered by the certificate, correct the error by a further certificate.

Proof of cer-
tificate.

60. A copy of the *London, Edinburgh, or Dublin Gazette* containing a certificate or a copy of a certificate, purporting to be printed by the printers of the *London, Edinburgh, or Dublin Gazette*, shall be conclusive evidence of the certificate, and of the due publication thereof, without any proof of the *Gazette*, or without any proof of the copy having been in fact so printed, as the case may be.

Copies of cer-
tificate for
sale.

61. The company or persons empowered by a certificate shall at all times keep at their head office copies of the certificate printed

by the printer of the *Gazette* or one of the *Gazettes* in which the same was published, in such form as general rules under this Act direct, to be sold to all persons desiring to buy the same, at a price not exceeding one shilling for each copy.

27 & 28 Vict.
c. 121,
ss. 62—65.

If any company or persons fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

62. Penalties under this Act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under the Railways Clauses Acts are recoverable and applicable.

Recovery and
application of
penalties.

63. The Act of the session of the seventh year of King William the Fourth and the first year of her Majesty (chapter eighty-three), "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament," shall apply to documents required to be deposited by general rules under this Act.

As to custody
of documents
under 7 W. 4
& 1 Vict.
c. 83.

64. The general rules under this Act shall in the first instance be those set forth in the schedule to this Act; and the Board of Trade may from time to time, for the better execution of this Act, make general rules adding to, altering, or revoking any general rules for the time being in force under this Act; but any general rules so made by the Board of Trade shall not have effect unless and until they have laid before both Houses of Parliament, and if either House of Parliament, within six weeks after the same are laid before that House, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof (as the case may be) shall not take effect; otherwise all rules made by the Board of Trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this Act.

General rules
in schedule
with power
for amend-
ment.

All general rules which are to take effect under the present section shall be published in the *London*, *Edinburgh*, and *Dublin Gazettes*.

65. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past.

Annual report
to Parliament
by Board of
Trade.

27 & 28 Vict.
c. 121,
Schedule.

THE SCHEDULE REFERRED TO IN THE FOREGOING ACT

(I.) [*Repealed by 33 & 34 Vict. c. 19, s. 2.*]

(II.)—FORM OF CERTIFICATE OF BOARD OF TRADE.

The Railway.

Certificate of the Board of Trade for the construction
of the railway.

Whereas the promoters of the Railway have contracted for the purchase of the lands required for the railway and the works connected therewith, and have complied with the requirements of the Railways Construction Facilities Act, 1864:

Now, therefore, the Board of Trade do, by this their certificate, in pursuance of the said Act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows:

[*Here are to follow the provisions of the certificate showing the powers conferred and the terms and conditions (if any) imposed.*]

(Signed) C.D.
Secretary to the Board of Trade.

The Board of Trade,
Whitehall.

Dated this day of .

(III.)—TOLLS AND CHARGES.

27 & 28 Vict.
c. 121,
Schedule.

TABLE I.

Maximum Charges for Use of Railway and supply of Carriages, Waggon, or Trucks.

	For use of railway, per mile.	For supply of carriage, waggon, or truck by the proprietors of the railway, the additional sum per mile of
Passengers:		
For every person	Twopence.	One penny.
Animals:		
For every horse, ass, mule, or other beast of draught or burden (Class 1)	Threepence.	One penny.
For every ox, cow, bull, or head of neat cattle (Class 2)	Twopence.	One penny.
For every calf, pig, sheep, lamb, and other small animal (Class 3)	Three farthings.	One farthing.
Goods (except as provided for in Table IV.):		
For cotton and other wools, manufactured goods, drugs, fish, and all other wares, merchandise, articles, matters, or things not enumerated in any other class (Class 4)	Threepence.	One penny.
For sugar, grain, corn, flour, hides, dyewoods, earthenware, timber, staves, deals, and metals (except iron), nails, anvils, vices, chains, and light iron castings (Class 5)	Twopence halfpenny.	One penny.
For coke, charcoal, pig iron, bar iron, rod iron, sheet iron, hoop iron, plates of iron, wrought iron, heavy iron castings, railway chains, slabs, billets, and rolled iron, lime, bricks, tiles, slates, salt, fireclay, and stone (Class 6)	Three halfpence.	One penny.
For dung, compost, manure, undressed material for repair of public roads or highways, coals, culm, cinders, cannel, ironstone, iron ore, limestone, clay (except fireclay), chalk, sand, and slag (Class 7)	Five farthings.	One halfpenny.
For every carriage, of whatever description, conveyed on a truck or platform belonging to the proprietors of the railway (Class 8):		
If not weighing more than one ton	Sixpence.	
If weighing more than one ton, then for the first ton	Sixpence.	
And for every additional quarter of a ton, or fractional part of a quarter of a ton, above the first ton	Three halfpence.	

TABLE II.

Maximum Charges for Supply of Locomotive Power.

For the use of engines for propelling carriages on the railway, for every passenger, animal, and ton of goods per mile one penny.

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TABLE III.

Maximum total Charges for Use of Railway and supply of Carriages, Waggon, or Trucks, and supply of Locomotive Power, and every other Expense incidental to Conveyance of Passengers, Animals, or Goods along the Railway.

		Per Mile.
Passengers:—		
For every person conveyed in a first-class carriage		Threepence.
For every person conveyed in a second-class carriage		Twopence.
For every person conveyed in a third-class carriage		Five farthings.
Animals:—		
For every animal in Class 1		Fourpence.
„ Class 2		Threepence.
„ Class 3		Three halfpence.
Goods:—		
For every thing in Class 4	per ton	Fourpence.
„ Class 5	„	Threepence.
„ Class 6	„	Twopence.
„ Class 7	„	Three halfpence.
For every carriage in Class 8	„	The charge specified in Table I.

TABLE IV.

Maximum Charges for small Packages and single Articles of Great Weight.

Small packages:—		
For every parcel not exceeding seven pounds in weight		Sixpence.
„ exceeding seven pounds, but not exceeding fourteen pounds, in weight		Eightpence.
„ exceeding fourteen pounds, but not exceeding twenty-eight pounds, in weight		One shilling.
„ exceeding twenty-eight pounds, but not exceeding fifty-six pounds, in weight		One shilling and threepence.
„ exceeding fifty-six pounds, but not exceeding five hundred pounds, in weight, for the first fifty-six pounds		One shilling.
And for every additional fifty-six pounds, or fractional part of fifty-six pounds, above the first fifty-six pounds		Sixpence.

Single articles of great weight :—

For every boiler, cylinder or single piece of machinery, timber or stone, or other single article :

If weighing (inclusive of the carriage) more than four but not more than eight tons, sixpence per ton per mile.

If weighing (inclusive of the carriage) more than eight tons, such sum as the proprietors of the railway think fit.

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REGULATIONS.

1. For passengers, animals, or goods conveyed on the railway for a distance less than that prescribed in the certificate as the short distance, and if none is prescribed, then for a distance less than six miles, charges are to be payable as for the short distance prescribed, and if none is prescribed, then as for six miles. Short distance charge.

2. In respect of passengers, every fraction of a mile beyond an integral number of miles is to be deemed a mile. Fraction of mile ; passengers.

3. In respect of animals and goods, for a fraction of a mile beyond the short distance prescribed, or if none is prescribed, then beyond six miles, or beyond any greater number of miles, charges are to be payable in proportion to the number of quarters of a mile contained in that fraction ; and a fraction of a quarter of a mile is to be deemed a quarter of a mile. Fraction of mile ; animals and goods.

4. For a fraction of a ton charges are to be payable according to the number of quarters of a ton in that fraction ; and a fraction of a quarter of a ton is to be deemed a quarter of a ton. Fraction of ton.

5. Every passenger travelling on the railway may, without charge, cause to be carried in the same train with him his ordinary luggage, not exceeding the weight prescribed in the certificate, and if none is prescribed, then not exceeding the weight of one hundred and twenty pounds for a first-class passenger, one hundred pounds for a second-class passenger, and sixty pounds for a third-class passenger. Passengers' luggage.

6. The restriction as to charges for passengers does not extend to special trains when required by passengers, but applies only to the ordinary or express passenger or goods trains appointed by the proprietors of the railway. Special trains.

7. Except as to stone and timber, weight is to be determined according to avoirdupois weight. Determination of weight.

Fourteen cubic feet of stone, and forty cubic feet of oak, mahogany, teak, beech, or ash, and fifty cubic feet of any other timber, are to be deemed one ton, and so in proportion for any smaller quantity.

8. In addition to the charges in Table III., a reasonable charge is to be payable for the loading, covering, and unloading, of goods at any station, being a terminal station in respect of such goods, Terminal station charges.

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and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services, or any of them, are or is performed by the proprietors of the railway.

A station is not to be considered a terminal station in respect of goods, unless they are received there direct from the consignor, or are directed to be delivered there to the consignee.

**Small pack-
ages.**

9. The term small packages does not include articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like; but applies only to single parcels in separate packages.

**Agreement
for higher
charges.**

10. Nothing herein or in the certificate contained is to prevent the proprietors of the railway from taking any charge over and above the charges hereinbefore limited for the conveyance of goods of any description by agreement with the owners of or any persons in charge of such goods, either in respect of the conveyance thereof (except small packages) by passenger trains, or by reason of any other special service performed by the proprietors of the railway in relation thereto.

(IV.)—ENACTMENTS IN GENERAL ACTS RELATING TO RAILWAYS APPLIED TO RAILWAYS UNDER THIS ACT.

Session and Chapter, and Section (if any).	Title or Short Title of Act.
1 & 2 Vict. c. 80 . . .	An Act for the Payment of Constables for keeping the Peace near Public Works.
1 & 2 Vict. c. 98 . . .	An Act to provide for the Conveyance of the Mails by Railways.
2 & 3 Vict. c. 45 . . .	An Act to amend an Act of the Fifth and Sixth Years of the Reign of his late Majesty, King William the Fourth relating to Highways.
3 & 4 Vict. c. 97 . . .	An Act for regulating Railways.
5 & 6 Vict. c. 55 . . .	An Act for the better regulation of Railways, and for the Conveyance of Troops.
5 & 6 Vict. c. 79, ss. 2 to 7 (both inclusive), and ss. 24, 25, 26	An Act to repeal the Duties payable on Stage Carriages, and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other duties in lieu thereof; and also to amend the Laws relating to Stamp Duties.
7 & 8 Vict. c. 85 . . .	An Act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament, and for other Purposes relating to Railways.
8 & 9 Vict. c. 3 . . .	An Act for the Appointment of Constables or other Officers for keeping the peace near Public Works in Scotland.
8 & 9 Vict. c. 46 . . .	An Act for the Appointment of additional Constables for keeping the Peace near Public Works in Ireland.
9 & 10 Vict. c. 57, ss. 4, 6, 7, 8	An Act for regulating the Gauge of Railways.
10 & 11 Vict. c. 85, s. 16 .	An Act for giving further Facilities for the Transmission of Letters by Post, and for the regulating the Duties of Postage thereon, and for other Purposes relating to the Post Office.

Session and Chapter, and Section (if any).	Title or Short Title of Act.	27 & 28 Vict. c. 121, Schedule.
14 & 15 Vict. c. 64 . .	An Act to Repeal the Act for constituting Commissioners of Railways.	
17 & 18 Vict. c. 31 . .	The Railway and Canal Traffic Act, 1854.	
18 & 19 Vict. c. 122, s. 6 .	An Act to amend the Laws relating to the Construction of Buildings in the Metropolis and its Neighbourhood.	
20 & 21 Vict. c. 31, s. 4 .	An Act to amend and explain the Inclosure Acts.	
21 & 22 Vict. c. 75 . .	An Act to amend the Laws relating to Cheap Trains, and to restrain the exercise of certain Powers by Canal Companies, being also Railway Companies.	
22 & 23 Vict. c. 59 . .	Railway Companies Arbitration Act, 1859.	
26 & 27 Vict. c. 33, ss. 13, 14	An Act for granting to her Majesty certain Duties of Inland Revenue, and to amend the Laws relating to the Inland Revenue.	
26 & 27 Vict. c. 112, s. 32 .	The Telegraph Act, 1863.	

(V.)—GENERAL RULES.

Form of Application.

1. The application to the Board of Trade for a certificate is to be made by a memorial in writing, signed by the promoters, or some or one of them, and lodged at the office of the Board of Trade.
2. Together with the memorial the promoters are to lodge—
 - (a) A printed draft of the certificate as proposed by the promoters:
 - (b) An estimate of the expense of the construction of the proposed new railway or work (if any) signed by the person making the estimate.

Plans, Sections, &c.

3. Maps, plans, sections, and books of reference deposited by the promoters are to be such, in respect of scale and contents and otherwise, as, under the standing orders of either House of Parliament for the time being in force, they would be obliged to deposit if they were proceeding in the same case by a railway bill.
4. The maps, plans, sections, and books of reference aforesaid are to be deposited at the office of the Board of Trade at the time when the memorial is lodged there.
5. They are also to be deposited for public inspection at the same offices of the clerks of the peace or sheriff clerks, at which, under the standing orders aforesaid, the promoters would be obliged to deposit them if they were proceeding in the same case by a railway bill.
6. Where any part of the railway will be situate within the

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limits of the metropolis, as defined by The Metropolis Management Act, 1855, a copy of so much of the plans and sections as relates to that part is to be deposited at the office of the Metropolitan Board of Works.

7. A copy of so much of the plans and sections as relates to each parish in which any part of the railway will be situate, or in which any lands intended to be taken for the railway are situate, together with a copy of so much of the book of reference as relates to that parish, is to be deposited for public inspection with the officer or person with whom, under the standing orders aforesaid, the promoters would be obliged to deposit the same if they were proceeding in the same case by a railway bill.

Advertisements as to Application.

8. After all the deposits aforesaid have been made, notice of the application to the Board of Trade is to be given by advertisement published as follows, namely:

Where the railway will be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of that county, city, or town, or county of a city or town:

Where the railway will not be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of the county, city, or town, or county of a city or town, wherein the head office of the promoters is situate, and also once in each of three successive weeks in some one and the same newspaper of each county, city, or town, or county of a city or town, wherein any part of the railway will be situate:

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county:

In every case, once at least in the *London, Edinburgh, or Dublin Gazette*, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland; and both in the *London* and in the *Edinburgh Gazette*, if the railway will be situate partly in England and partly in Scotland.

9. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

10. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

11. Each advertisement is to state that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection, respecting the application, may do so by letter addressed to the Secretary of the Board of Trade, on or before the first day of August or first day of January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

Deposit of Copies of Advertisements.

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12. Within one week after the publication of the latest advertisement, a copy of each of the newspapers and *Gazettes* containing the several advertisements is to be lodged at the office of the Board of Trade.

13. Within the same time, a printed copy of the *Gazette* advertisement is to be deposited for public inspection in each of the same offices, and with each of the same officers and persons, in which or with whom the maps, plans, sections, and books of reference or parts thereof were deposited.

14. The last-mentioned deposit of a copy of the *Gazette* advertisement may be made (if the promoters choose) by means of a registered post letter; and any deposit so made shall be deemed made on the day on which such letter would be delivered in ordinary course of post.

Note of Time of Deposit.

15. Where any document is deposited under these rules for public inspection, the clerk of the peace, sheriff clerk, or other officer or person, in whose office or with whom it is deposited, is to make thereon a memorial in writing denoting the time at which it was deposited.

Notice to Road Trustees.

16. Where any part of a turnpike road or public highway is intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway, the promoters in the month of June or November (as the case may be) in which the advertisements are published, are to serve notice of the application on the trustees or other persons having the management of such road or highway.

Notice of Opposition.

17. Notice of opposition by a railway or canal company is to be lodged at the office of the Board of Trade, not later than the first day of August or first day of January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

18. On the draft certificate being settled by the Board of Trade, the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person, by whom any representation or objection respecting the application was made to or brought before the Board of Trade, and are also to give by advertisement or otherwise such public or other notice (if any) thereof, as according to the circumstances of the case the Board of Trade direct.

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Supply of Copies of Draft Certificate.

19. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement, a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than sixpence each.

20. From the time of the settlement of the draft certificate by the Board of Trade, the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Deposit of Money.

21. The deposit of money or government securities in Court is to be made within one month after notice from the Board of Trade that they are prepared to issue the certificate.

Printing of Certificate.

22. Copies of the certificate printed by the printers of a Gazette are to be printed on ordinary white folio paper, similar in size to the paper on which the public general Acts of Parliament are printed for public sale.

PRIVATE BILLS COSTS ACT, 1865.

28 VICT. c. 27.

An Act for awarding Costs in certain cases of Private Bills. 28 Vict. c. 27,
[26th May, 1865.] ss. 1, 2.

WHEREAS it is expedient to empower committees of both Houses of Parliament on private bills to award costs in certain cases: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. When the committee on a private bill shall decide that the preamble is not proved, or shall insert in such bill any provision for the protection of any petitioner, or strike out or alter any provision of such bill for the protection of such petitioner, and further unanimously report, with respect to any or all of the petitioners against the bill, that such petitioner or petitioners has or have been unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the bill, such petitioner or petitioners shall be entitled to recover from the promoters of such bill his or their costs in relation thereto, or such portion thereof as the committee may think fit, such costs to be taxed by the taxing officer of the house as hereinafter mentioned, or the committee may award such a sum for costs as they shall think fit, with the consent of the parties affected.

When committee report "preamble not proved," opponents to be entitled to recover costs.

2. When the committee on a private bill shall decide that the preamble is proved, and further unanimously report that the promoters of the bill have been vexatiously subjected to expense in the promotion of the said bill by the opposition of any petitioner or petitioners against the same, then the promoters shall be entitled to recover from the petitioners, or such of them as the committee shall think fit, such portion of their costs of the promotion of the bill as the committee may think fit, such costs to be taxed by the taxing officer of the house as hereinafter mentioned, or such a sum for costs as the committee shall name, with the consent of the parties effected; and in their report to the house the committee shall state what portion of the costs, or what sum for costs, they shall so think fit to award, together with the names of the parties liable to pay the same and the names of the parties entitled to

When committee report unanimously "Opposition unfounded," promoters to be entitled to recover costs.

28 Vict. c. 27, ss. 3—5. receive the same : provided always, that no landowner who *bond fide* at his own sole risk and charge opposes a bill which proposes to take any portion of the said petitioner's property for the purposes of the bill shall be liable to any costs in respect of his opposition to such bill.

Proviso.

Under this section it is competent for the committee to find that the opposition of petitioners against a bill is vexatious, but they cannot so find as regards persons not petitioners, for instance, directors of a company, when the petition is presented by the company (*Mallet v. Hanley* (2), 18 Q. B. D. 787).

Costs to be taxed.

3. On application made to the taxing officer of the house by such promoters or petitioners, or by their solicitors or parliamentary agents, not later than six calendar months after the report of such committee, and in cases where no sum shall have been named by the committee, with the consent of the parties affected, not until one month after a bill of such costs shall have been delivered to the party chargeable therewith, which bill shall be sealed with the seal or subscribed with the proper hand of the parties claiming such costs, or of their solicitor or parliamentary agent, the taxing officer shall examine and tax such costs, and shall deliver to the parties effected, or either or any of them, on application, a certificate signed by himself expressing the amount of such costs, or in cases where a sum for costs shall have been named by the committee, with the consent as aforesaid, such sum as shall have been so named, with the name of the party liable to pay the same, and the name of the party entitled to receive the same, and such certificate shall be conclusive evidence as well of the amount of the demand as of the title of the party therein named to recover the same from the party therein stated to be liable to the payment thereof; and the party claiming under the same shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

The month to elapse after delivery of the bill of costs is a month previous to the application to tax (*Williams v. Swansea Canal Navigation Co.*, L. R. 3 Ex. 158).

Powers of taxing officer.

4. All powers given to the taxing officer by the Acts ten and eleven Victoria, chapter sixty-nine, and twelve and thirteen Victoria, chapter seventy-eight, with reference to the examination of parties and witnesses on oath, and with reference to the production of documents, and with reference to the fees payable in respect of any taxation, shall be vested in the taxing officer for the purposes of this Act.

Recovery of costs when taxed.

5. The party entitled to such taxed costs, or such sum named by the committee, with such consent as aforesaid, or his executors or administrators, may demand the whole amount thereof, so certified as above, from any one or more of the persons liable to the payment thereof; and in case of nonpayment thereof on demand may recover the same by action of debt in any of her Majesty's Courts of Record at Westminster or Dublin, or by action in the Court of Session in Scotland. In such action it shall be sufficient, in England or Ireland, for the plaintiff to declare that

the defendant is indebted to him in the sum mentioned in the said certificate; and the said plaintiff shall, upon filing the said declaration, together with the said certificate and an affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by *nil dicit*, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law: Provided always, that the validity of such certificate shall not be called in question in any Court.

28 Vict. c. 27,
ss. 6—9.

The certificate is conclusive only if the provisions of the statute have been complied with (*Williams v. Swansea Canal Navigation Co.*, L. R. 3 Ex. 158; 37 L. J. Ex. 107).

Proceedings upon the certificate will be restrained if the costs have been taxed without notice of the appointment for taxation to the persons against whom costs are awarded (*The Swansea Canal Navigation Co. v. Gt. W. Ry. Co.*, 37 L. J. Ch. 238; 18 L. T. N. S. 78; 5 Eq. 444).

The defendant cannot delay judgment by putting in a defence. His proper course is either to get leave to defend or to move to stay proceedings on the judgment (*Mallet v. Hanley* (1), 18 Q. B. D. 303; see, too, 18 Q. B. D. 787).

6. In such action it shall be sufficient, in Scotland, for the pursuer to allege that the defender is indebted to him in the sum mentioned in the said certificate, under the like proviso in regard to the validity of the certificate.

Form of
action in
Scotland.

7. In every case it shall be lawful for any person from whom the amount of such costs or sum named by the committee with consent as aforesaid has been so recovered to recover from the other persons, or any of them, who are liable to the payment of such costs or sum named by the committee with consent as aforesaid a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

Persons pay-
ing costs may
recover a pro-
portion from
other persons
liable thereto.

8. In any case in which the committee shall have reported that the preamble is not proved, and where, in accordance with the standing orders of either House of Parliament and of an Act of the ninth year of her present Majesty, chapter twenty, a deposit of money or stock is made with respect to the application to Parliament for an Act, the money or stock so deposited shall be a security for the payment by the promoters of the bill for the Act of all costs or sums in respect of costs, if any, payable by them under this Act; and every party entitled to receive any costs or sum so payable shall accordingly have a lien available in equity for the same on the money or stock so deposited, and the lien shall attach thereon at the time when the bill is first referred to a committee of either House of Parliament; provided that where several parties have the lien for an amount exceeding in the aggregate the net value of the money or stock, their respective claims shall proportionately abate.

When com-
mittee report
"preamble
not proved,"
promoters to
pay costs out
of deposits.

9. When a bill is not promoted by a company already formed, all persons whose names shall appear in such bill as promoting the

Definition of
promoters.

28 Vict. c. 27,
ss. 10, 11. same, and in the event of the bill passing the company thereby incorporated, shall be deemed to be promoters of such bill for all the purposes of this Act.

Meaning of
private bill.

10. For the purposes of this Act the expression private bill shall extend to and include any bill for a local and personal Act.

Commence-
ment of Act.

11. That this Act shall not take effect before the first day of November, one thousand eight hundred and sixty-five.

THE TELEGRAPH ACT AMENDMENT ACT, 1866.

29 VIOT. c. 3.

An Act to amend the Telegraph Act, 1863.

[6th March, 1866.]

29 Vict. c. 3,
ss. 1—4.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The powers vested in one of her Majesty's principal Secretaries of State by section fifty-two of "The Telegraph Act, 1863," may be exercised in Ireland by the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, as well as by one of her Majesty's principal Secretaries of State, subject, with respect to compensation, and in all other respects, to the provisions in that section contained.

Powers vested in Secretary of State under sect. 52 of 26 & 27 Vict. c. 112, may be exercised by Lord Lieutenant of Ireland.

2. Where the powers of section fifty-two of the said Act are exercised by the Lord Lieutenant or other chief Governor or Governors of Ireland, then and in every such case, in section fifty-one of the same Act, the Lord Chief Justice of her Majesty's Court of Common Pleas in Dublin shall be deemed to be substituted for the Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster.

Where such powers are exercised, sect. 51 of above-recited Act to be altered as to Ireland.

3. The provisions of the following sections of the said Act, namely, sections forty-eight to fifty-one (both inclusive), section fifty-two as amended by this Act, and section fifty-three, shall extend and apply to all incorporated companies, existing or future, constituted with the object or carrying on the business of constructing, maintaining, or working telegraphs, and to the works of those companies.

Extension of sects. 48 to 53 of above-recited Act to all companies.

4. This Act may be cited as "The Telegraph Act Amendment Act, 1866."

Short title.

THE LABOURING CLASSES DWELLING HOUSES ACT, 1866.

29 VICT. c. 28.

29 Vict. c. 28, *An Act to enable the Public Works Loan Commissioners to make advances towards the erection of Dwellings for the Labouring Classes.* [18th May, 1866.]
ss. 1, 4.

WHEREAS by "The Labouring Classes Lodging Houses Act, 1851," powers were vested in certain local authorities for the purpose of facilitating the erection of lodging houses for the labouring classes :

And whereas it is desirable that further provision should be made for facilitating and encouraging the erection of dwellings for the labouring classes in populous places :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as "The Labouring Classes Dwelling Houses Act, 1866."

Authorities and persons to whom loans may be made.

4. For the purpose hereinafter mentioned, the Public Works Loan Commissioners, as defined by the said Act of the twenty-fourth and twenty-fifth years of her Majesty, may out of the funds for the time being at their disposal from time to time advance on loan to any such local or other authority as hereinafter mentioned, namely (among others)—

Any railway company, or dock or harbour company, or any other company, society, or association established for the purposes of this Act or for trading or manufacturing purposes ;

Any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired ;

And any such local or other authority, or any such body or proprietor, may from time to time borrow from the Public Works Loan Commissioners such money as may be required for the purpose of this Act, subject and according to the following provisions :

Objects of loans.

1. Such advance on loan shall be made for the purpose of assisting in the purchase of land and buildings, or in the

erection, alteration, and adaptation of buildings to be used as dwellings for the labouring classes, and in providing all conveniences which may be deemed proper in connexion with such dwellings: 29 Vict. c. 28,
s. 4.

2. Any such advance may be made whether the local or other authority or body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act; but nothing in this Act contained shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up:
3. No sum shall be advanced without the approval of the Commissioners of her Majesty's Treasury of the borrowing thereof, signified by some writing under the hand of one of their secretaries or assistant-secretaries:
4. It shall be lawful for the said Commissioners of her Majesty's Treasury to make such rules and regulations as they shall from time to time think proper with respect to applications for advances under this Act, and the terms and conditions upon which such advances are to be made, and to issue such instructions and forms as they may think proper for the guidance of and observance of by persons applying for or receiving loans, or executing works, or rendering accounts of monies expended under this Act; or regarding the class of dwellings towards the providing of which such loans may be made, and the adaptation thereof to the purposes intended, and as to the mode of providing for their maintenance, repair, and insurance: Rules and
regulations.
5. The period for the repayment of the sums advanced shall not exceed forty years: Currency of
loans.
6. The repayment of the money advanced, with interest thereon at such rate as shall be agreed upon, but not at a less rate than four pounds per centum per annum, shall be secured as follows; namely, in the case of an advance to any such local or other authority as aforesaid, either by a mortgage solely of the rates leviable by such authority, or by such other mortgage as hereinafter mentioned, or by both; and in any other case by a mortgage of the estate or interest of any such local or other authority, or of any such body or proprietor as aforesaid, in the * land or dwellings for the purposes of which the advance is made; and in the case of an advance to a company any part of whose capital remains uncalled up or unpaid, by a mortgage also of all capital so remaining uncalled up or unpaid; and any such mortgage as aforesaid may be taken either alone or together with any other security which may be agreed upon; but it shall not be incumbent on the Public Works Loan Commissioners to require any other security: * [Defined by
30 & 31 Vict.
c. 28, s. 2.]
7. No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be

29 Vict. c. 28,
ss. 5, 8, 10.

mortgaged shall be either an estate in fee simple or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance :

8. The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged ; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid ; and a mortgage may be accordingly made to secure such advances so to be made from time to time :
9. For the purposes of this Act, every such local or other authority or body as aforesaid is hereby authorised to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

Incorporation
of 8 & 9 Vict.
cc. 18 & 19,
with this Act.

5. "The Lands Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation (Scotland) Act, 1845," and any Act amending the same, except the clauses in the said Acts respectively with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with this Act, and for the purposes of those Acts this Act shall be deemed the special Act ; and any such local or other authority or body or proprietor as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Powers to
companies.

8. Any railway company, or dock or harbour company, or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the labouring class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary), authorised at any time or from time to time to erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the labouring class employed by them, and shall have all the like powers of borrowing and other powers which are hereinbefore conferred on any such body or proprietor as hereinbefore mentioned.

Extent of Act. 10. This Act shall not extend to Ireland.

THE RAILWAY COMPANIES SECURITIES ACT, 1866.

29 & 30 VICT. c. 108.

*An Act to amend the Law relating to Securities issued by
Railway Companies.* 29 & 30 Vict.
c. 108,
ss. 1—3.
[10th August, 1866.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Railway Companies Securities Act, 1866. Short title.

2. In this Act—

The term "railway" includes a tramway authorised by Act of Parliament incorporating the Companies Clauses Consolidation Act, 1845, but not any other tramway :

Interpretation
of terms.

The term "railway company" includes every company authorised by Act of Parliament to raise any loan capital for the construction or working of a railway, or for any purposes connected with the conveyance by such company of traffic on a railway, either alone or in conjunction with other purposes :

The term "debenture stock" includes mortgage preference stock and funded debt, and any stock or shares representing loan capital of a railway company, by whatever name called :

The term "Act of Parliament" includes a certificate of the Board of Trade made under the Railways Construction Facilities Act, 1864, or the Railway Companies Powers Act, 1864, or any other Act of Parliament.

27 & 28 Vict.
cc. 120, 121.

3. Every railway company shall, on or before the fifteenth day of January one thousand eight hundred and sixty-seven, register, and shall always thereafter keep registered, at the office of the registrar of joint stock companies in England, the name of their secretary, accountant, treasurer, or chief cashier for the time being authorised by them to sign instruments under this Act, or, if they think fit, the names of two or more such officers of the

Company to
have regis-
tered officer.

29 & 30 Vict.
c. 108,
ss. 4—10.

company so authorised (and the officer so registered for the time being, and any one of the officers so registered if more than one, is in this Act referred to as the company's registered officer).

See the Forms following this Act.

Half-years
for purposes
of Act.

4. Half-years shall, for the purposes of this Act, be deemed to end on the thirtieth day of June and the thirty-first day of December; and the first half-year to which this Act applies shall be that ending on the thirty-first day of December, one thousand eight hundred and sixty-six; but the Board of Trade, on the application of any railway company, may (by writing under the hand of one of their secretaries or assistant secretaries, which shall be registered by the railway company at the office of the said registrar) appoint, with respect to that company, other days for the ending of half-years (including the first).

Loan capital
accounts to be
made half-
yearly.

5. Within fourteen days after the end of each half-year every railway company shall make an account of their loan capital authorised to be raised and actually raised up to the end of that half-year, specifying the particulars described in the first schedule to this Act, Part I. (which account for each half-year is in this Act referred to as the loan capital half-yearly account).

Form of half-
yearly
account.

6. The Board of Trade may from time to time, by notice published in the *London, Edinburgh and Dublin Gazettes*, prescribe the form in which the loan capital half-yearly account is to be made.

Account to be
open to share-
holders, &c.

7. The loan capital half-yearly account of each company may be perused at all reasonable times, without payment, by any shareholder, stockholder, mortgagee, bond creditor, or holder of debenture stock of the company, or any person interested in any mortgage, bond, or debenture stock of the company.

Deposit of
copy of
account with
registrar of
joint stock
companies.

8. Within twenty-one days after the end of each half-year every railway company shall deposit with the registrar of joint stock companies in England a copy, certified and signed by the company's registered officer as a true copy, of their loan capital half-yearly account.

See the Forms following this Act.

Deposit in
Scotland and
Ireland.

9. A railway company may also, if they think fit, deposit with the registrar of joint stock companies in Scotland, or with the assistant registrar of joint stock companies in Ireland, or with each, a like copy of any loan capital half-yearly account of the company.

Prohibition
against bor-
rowing before
registration of
Act giving

10. It shall not be lawful for any railway company at any time to borrow any money on mortgage or bond, or to issue any debenture stock, under any Act of the present session or passed after the end of the half-year to which their then last registered loan

capital half-yearly account relates, unless and until they have first deposited with the registrar of joint stock companies in England a statement, certified and signed by the company's registered officer as a true statement, specifying the particulars described in the first schedule to this Act, Part II.

29 & 30 Vict.
c. 108,
ss. 11-14.
the borrowing
power.

The Board of Trade may from time to time, by notice published in the *London, Edinburgh, and Dublin Gazettes*, prescribe the form in which such statement is to be made.

A railway company may also, if they think fit, deposit with the registrar of joint stock companies in Scotland, or with the assistant registrar of joint stock companies in Ireland, or with each, a like copy of any such statement.

See the Forms following this Act.

11. If at any time any railway company fail to register or keep registered as aforesaid the name of their secretary, accountant, treasurer, or chief cashier, or to deposit with the registrar of joint stock companies in England, within the time required by this Act, such a copy as aforesaid of any loan capital half-yearly account, or borrow any money on mortgage or bond, or issue any debenture stock, without having first deposited with the registrar of joint stock companies in England such a statement as they are by this Act required to deposit, in any case where they are so required, then and in every such case they shall be deemed guilty of an offence against this Act, and shall for every such offence be liable, on summary conviction, to a penalty not exceeding twenty pounds, and in case of a continuing offence to a further penalty not exceeding five pounds for every day during which the same continues after the day on which the first penalty is incurred.

Penalty on
company
failing to
register, &c.

12. Every person may inspect the documents kept by any registrar or assistant registrar under this Act on paying a fee of one shilling for each inspection as regards each railway company; and any person may require a copy or extract of any of those documents to be certified by the registrar or assistant registrar on paying for such certified copy or extract a fee of sixpence, and a further fee of sixpence for every two hundred words or fractional part of two hundred words after the first two hundred words.

Power to
inspect docu-
ments on pay-
ment of a fee.

13. Every railway company on registering the name or names of any officer or officers, or depositing any account or statement, under this Act, shall pay the like fee as is for the time being payable under the Companies Act, 1862, on registration of any document other than a memorandum of association.

Fees on regis-
tration of
name of
officer, &c.

14. There shall be put (by indorsement or otherwise) on every mortgage deed or bond made or given after the twenty-first day of January, one thousand eight hundred and sixty-seven by a railway company for securing money borrowed by the company, and on every certificate given after that day by a railway company for any

Declaration
by directors,
&c. on mort-
gage deed,
&c.

29 & 30 Vict.
c. 108,
ss. 15—19.

sum of debenture stock issued by the company, a declaration in the form given in the second schedule to this Act, or to the like effect, with such variations as circumstances require.

Every such declaration shall be signed by two directors of the company specially authorised and appointed by the board of directors to sign such declarations, and by the company's registered officer.

Penalty on
company, &c.
if declaration
omitted.

15. If after the expiration of the time specified in the last preceding section any railway company deliver any such mortgage deed, bond, or certificate without such a declaration being first put thereon and signed as aforesaid, they shall be deemed guilty of an offence against this Act, and shall for every such offence be liable, on summary conviction, to a penalty not exceeding twenty pounds; and if any director or officer of any railway company knowingly authorises or permits the delivery of any such mortgage deed, bond, or certificate without such a declaration being first put thereon and signed as aforesaid, every such person shall be deemed guilty of an offence against this Act.

Penalty on
registered
officer.

16. If any director or registered officer of a company signs any declaration, account, or statement under this Act knowing the same to be false in any particular he shall be deemed guilty of an offence against this Act.

Punishment
for offences
against Act.

17. If any director or officer of a railway company is guilty of an offence against this Act, he shall be liable, on conviction thereof on indictment, to fine or imprisonment, or on summary conviction thereof to a penalty not exceeding ten pounds.

Nothing to
affect liability
of company,
&c.

18. Nothing in this Act, or in any account, statement or declaration under it, shall affect in any action or suit any question respecting any loan, debt, liability, mortgage, bond, or debenture stock as between a railway company or any director or officer of a railway company on the one side, and any person or class of persons on the other side.

Account, &c.
not to be evi-
dence for
company.

19. An account, statement, or declaration under this Act shall not be admissible as evidence in favour of a railway company of the truth of any matter therein stated.

SCHEDULES.

THE FIRST SCHEDULE.

PART I.

Particulars to be specified in Loan Capital Half-yearly Account.

A. Every half-yearly account to show—

- (1.) The Act or Acts of Parliament under the powers of which the company have contracted any mortgage or bond debt existing at the end of the half-year, or have issued any debenture stock then existing, or the Act or Acts of Parliament by or under which any mortgage or bond debt or debenture stock of the company then existing has been confirmed, and the Act or Acts of Parliament under which the company have any subsisting power to contract any mortgage or bond debt, or to issue any debenture stock (either on fulfilment of any condition or otherwise) :
- (2.) The amount or respective amounts of mortgage or bond debt or debenture stock thereby authorised or confirmed :
- (3.) Whether or not by any such Act or Acts the obtaining of the certificate of a justice or sheriff for any purpose, or the obtaining of the assent of a meeting of the company, has been made a condition precedent to the exercise of the power thereby conferred of borrowing on mortgage or bond, or of creating and issuing debenture stock :
- (4.) The date at which such condition has been fulfilled :
- (5.) The amount or the aggregate amount, under the powers of such Act or Acts, actually borrowed up to the end of the half-year on mortgage or bond (distinguishing them), and then being an existing debt, and of debenture stock actually issued up to that time and then existing :
- (6.) The amount or the aggregate amount remaining to be borrowed.

B. The second and every subsequent half-yearly account to show also—

- (7.) The items described in paragraphs (2.) and (5.) of this part of the present schedule for two consecutive half-years, and the increase or decrease of any of those items in the second of those half-years as compared with the first.

29 & 30 Vict.
c. 106.
Schedule.

PART II.

PARTICULARS TO BE SPECIFIED IN STATEMENT AS TO NEW
BORROWING POWER.

- (1.) The Act of Parliament conferring the power to borrow on mortgage or bond or to issue debenture stock (either on fulfilment of any condition or otherwise) :
- (2.) The amount of mortgage or bond debt or debenture stock thereby authorised :
- (3.) Whether or not by such Act the obtaining of the certificate of a justice or sheriff for any purpose, or the obtaining of the assent of a meeting of the company, has been made a condition precedent to the exercise of the power thereby conferred of borrowing on mortgage or bond, or of creating and issuing debenture stock :
- (4.) The date at which such condition has been fulfilled.

THE SECOND SCHEDULE.

Declaration on Mortgage Deed, Bond, or Certificate of Debenture Stock.

The Railway Company.

We, the undersigned, being two of the directors of the company specially authorised and appointed for this purpose, and I, the undersigned registered officer of the company, do hereby declare (each for himself) that the within-written [*or as the case may be*] mortgage deed [*or bond or certificate*] is issued under the borrowing powers of the company as registered * on the day of , and is † not in excess of the amount there stated as remaining to be borrowed.

Dated this day of , 18 .

} Directors.

{ [Secretary or accountant,
 or as the case may be]
 and registered officer.

NOTE.—Where the case so requires with reference to a statement under the First Schedule, Part II., leave out from the * to the end of the Form and insert:—on the day of and the day of , and is not in excess of the amounts there stated as remaining and authorised to be borrowed.

Where the mortgage deed, bond, or certificate is issued under a power of reborrowing, or of issuing debenture stock in discharge of mortgage or bond debt, leave out from the † to the end of the Form, and insert:—in substitution for a mortgage deed [*or bond*] which has since been paid off.

"RAILWAY COMPANIES SECURITIES ACT, 1866."

29 & 30 Vict. c. 108.

**Return of the Name of the Registered Officer of the
Company.**

Pursuant to Section 3.

TO THE REGISTRAR OF JOINT STOCK COMPANIES.

We, the undersigned, and being two of the
Directors of the Company, hereby give you notice, in
accordance with the "Railway Companies Securities Act, 1866,"
that of and of the Company's
*authorised by them to sign instruments under that Act.

} *Directors.*

Dated the day of 18 .

Company's Address

* Here insert "Secretary," or "Accountant," or "Treasurer," or "Chief
Cashier," as the case may be.

NOTE.—*This Return must be signed by two of the Directors of the
Company.*

"RAILWAY COMPANIES SECURITIES ACT, 1866."

29 & 30 Vict. c. 108.

**Return of Copy of Loan Capital Half-yearly Account of the
Company.**

Pursuant to Section 8.

FIRST SCHEDULE.—PART I.

Particulars to be specified in Loan Capital Half-yearly Account :—

A. Every half-yearly account to show—

- (1.) The Act or Acts of Parliament under the powers of which the company have contracted any mortgage or bond debt existing at the end of the half-year, or have issued any debenture stock then existing, or the Act or Acts of Parliament by or under which any mortgage or bond debt or debenture stock of the company then existing has been confirmed, and the Act or Acts of Parliament under

29 & 30 Vict.
c. 108.
Forms.

which the company have any subsisting power to contract any mortgage or bond debt, or to issue any debenture stock, either on fulfilment of any condition or otherwise.

- (2.) The amount or respective amounts of mortgage or bond debt or debenture stock thereby authorized or confirmed.
- (3.) Whether or not by any such Act or Acts the obtaining of the certificate of a justice or sheriff, for any purpose, or the obtaining of the assent of a meeting of the company, has been made a condition precedent to the exercise of the power thereby conferred of borrowing on mortgage or bond, or of creating and issuing debenture stock.
- (4.) The date at which such condition has been fulfilled.
- (5.) The amount, or the aggregate amount, under the powers of such Act or Acts, actually borrowed up to the end of the half-year on mortgage or bond (distinguishing them), and then being an existing debt, and of debenture stock actually issued up to that time and then existing.
- (6.) The amount or the aggregate amount remaining to be borrowed.

B. The second and every subsequent half-yearly account to show also—

- (7.) The items described in paragraphs (2.) and (5.) of this part of the present schedule for two consecutive half-years, and the increase or decrease of any of those items in the second of those half-years as compared with the first.

Copy of Loan Capital Half-yearly Account of the Company, made up to the half-year ending day of , 18 .
 Dated the day }
 of , 18 . }

(7.)—continued.

Account showing Increase or Decrease in Loan Capital.

PART II.—Amount of Loan Capital actually raised.

For the half-year ending			For the half-year ending			Increase.			Decrease.		
Mortgage.	Bond.	Debenture Stock.	Mortgage.	Bond.	Debenture Stock.	Mortgage.	Bond.	Debenture Stock.	Mortgage.	Bond.	Debenture Stock.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.

(Signed)

Registered Officer.

29 & 30 Vict.
c. 108.
Forms.

29 & 30 Vict.
c. 108.
Forms.

RETURN OF LOAN CAPITAL—*continued.*

CERTIFICATE.

I hereby certify that the within-written Return is a true copy of the Loan Capital Half-yearly Account of the _____ Company, for the half-year ending _____, 18 .

(Signed)

Registered Officer.

Dated the _____ day of _____, 18 .

Form prescribed by Board of Trade under the 10th section of the

“RAILWAY COMPANIES SECURITIES ACT, 1866.”

29 & 30 Vict. c. 108.

Return of Statement as to New Borrowing Power of the
Company.

Pursuant to Section 10.

FIRST SCHEDULE.—PART II.

Particulars to be specified in Statement as to new Borrowing Power :—

- (1.) The Act of Parliament conferring the power to borrow on mortgage or bond or to issue debenture stock (either on fulfilment of any condition or otherwise).
- (2.) The amount of mortgage or bond debt or debenture stock thereby authorized.
- (3.) Whether or not by such Act the obtaining of the certificate of a justice or sheriff for any purpose, or the obtaining of the assent of a meeting of the company, has been made a condition precedent to the exercise of the power thereby conferred of borrowing on mortgage or bond, or of creating and issuing debenture stock.
- (4.) The date at which such condition has been fulfilled.

THE LABOURING CLASSES DWELLING HOUSES ACT, 1867.

30 VICT. c. 28.

30 Vict. c. 28, *An Act to amend the Labouring Classes Dwellings Acts, 1866.*
ss. 1—4. [17th June, 1867.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

Short title. 1. This Act may be cited as "The Labouring Classes Dwelling Houses Act, 1867."

Defining meaning of certain terms in 29 & 30 Vict. co. 28, & 44. 2. In the fourth section of "The Labouring Classes Dwelling Houses Act, 1866," the words "land or dwellings for the purposes of which the advance is made," and in the twelfth section of "The Labouring Classes Lodging Houses and Dwellings Act (Ireland), 1866," the words, "lands, buildings, or premises for the purpose of which such advance shall be made," shall respectively be construed to include any land, buildings, or premises held together with and for the same estate and interest as the lands, buildings, or premises upon which the money advanced is to be expended under the provisions of the said Acts respectively.

In case of advances to company, part of whose capital is unpaid, loan commissioners may dispense with mortgage. 3. In the case of an advance under the provisions of either of the said Acts to a company or society, any part of whose capital remains uncalled up or unpaid, it shall be lawful, in England for the Public Works Loan Commissioners, and in Ireland for the Public Works Commissioners, to dispense with a mortgage of such capital remaining uncalled up or unpaid, or of such part thereof as they may think fit.

Extending 29 & 30 Vict. c. 28, to Scotland. 4. Notwithstanding the fifty-third section of "The Labouring Classes Lodging Houses Act, 1851," all the provisions of "The Labouring Classes Dwelling Houses Act, 1866," so far as they are applicable to Scotland, shall be deemed and construed to extend and apply to Scotland.

THE RAILWAYS ACT (IRELAND), 1867.

30 & 31 Vict.
c. 104, s. 1.

30 & 31 VICT. c. 104.

An Act to amend and extend as to Railways in Ireland the Provisions of an Act of the Seventh and Eighth Years of Victoria, intituled An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament; and for other Purposes in relation to Railways.
[15th August, 1867.]

WHEREAS it is expedient to amend an Act passed in the session of Parliament holden in the seventh and eighth years of the reign of her present Majesty, intituled An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament; and for other Purposes in relation to Railways, so far as the same relates to the furnishing of accounts to the Commissioners of her Majesty's Treasury by railway companies in Ireland:

7 & 8 Vict.
c. 85.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for the Commissioners of her Majesty's Treasury to direct any railway company in Ireland to furnish to them, on such day as they shall appoint, a full and true account of all monies received and paid during a period of three years previous to the date of the last half-yearly account of such company on account of such railway or of any undertaking connected therewith (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses, on account of the said railway, from those on account of the trunk line or other railways), by the directors of the company to whom such railway belongs or by whom the same may be worked; and also an account of the assets and liabilities of such company, at such time or times during the said period as the said Commissioners shall specify; and such accounts shall be duly audited and certified under the hands of two or more of the directors of such company.

Power to
Treasury to
call for ac-
counts of any
railway com-
pany in Ire-
land.

30 & 31 Vict.
c. 104, s. 2.

Power to
Treasury to
appoint per-
sons to inspect
accounts, &c.,
of railway
companies in
Ireland.

2. It shall be lawful for the Commissioners of her Majesty's Treasury, if and when they shall think fit, to appoint any proper person or persons for all or any of the purposes following; that is to say,

To inspect the accounts and books of any railway company in Ireland during the period of three years previous to the date of the last half-yearly account of such company;

To examine the railway, stations, works, buildings, engines, carriages, and other property, of whatsoever kind, belonging to any railway company in Ireland;

and any person so appointed may at all reasonable times, upon producing his authority, if required, inspect the books, accounts and vouchers, and other documents of such company, at the principal place of business of such company, and may take copies or extracts therefrom, and enter upon and examine the railway or railways, and the stations, works and buildings belonging to such company, and may inspect the engines and carriages and other property, of whatever kind, belonging to such company; and every such person may call for the production of any books, accounts, vouchers, or documents in the possession or power of such company which he may think necessary for the purpose of determining any question or questions connected with the inspection or examination which he is authorized to make, and may examine any person touching any matters connected therewith on oath, and may administer the oaths necessary for that purpose.

THE RAILWAY COMPANIES (SCOTLAND)
ACT, 1867.

30 & 31 VICT. c. 126.

30 & 31 Vict.
c. 126, s. 21.

*An Act to amend the Law relating to Railway Companies in
Scotland.* [20th August, 1867.]

21. WHERE a company whose principal office is situate in Scotland have a railway or part of a railway in England the following provisions shall have effect :

Provision for
cases where
railways or
part in Eng-
land.

- (1.) Any petition for the approval and confirmation of a scheme under this Act shall be presented to the Court of Session :
- (2.) Where, after the presenting of any such petition, any person who is not amenable to the jurisdiction of the Court of Session brings any action or institutes any other proceeding against the company in England, the Court of Chancery may, on the application of the company on summons or motion, in a summary way restrain the same on such terms as the court thinks fit :
- (3.) Notice of the presenting of the petition shall be published in the *London Gazette*, and after such publication no execution, attachment, or other process against the property of the company in England shall be available for any person who is not amenable to the jurisdiction of the Court of Session without the leave of the Court of Chancery, to be obtained on summons or motion in a summary way.

THE RAILWAY COMPANIES ACT, 1867.

30 & 31 VICT. c. 127.

30 & 31 Vict.
c. 127,
ss. 1—4.

An Act to amend the Law relating to Railway Companies.
[20th August, 1867.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same as follows:

Preliminary.

Short title. 1. This Act may be cited as The Railway Companies Act, 1867.

Extent of Act. 2. Except as in this Act expressly otherwise provided, this Act shall not extend to Scotland.

Interpretation
of terms.

3. In this Act—

The term "company" means a railway company; that is to say, a company constituted by Act of Parliament, or by certificate under Act of Parliament, for the purpose of constructing, maintaining, or working a railway (either alone or in conjunction with any other purpose):

The term "action" includes suit or other proceeding:

The term "judgment" includes decree, order, or rule:

The term "share" includes stock:

The term "person" includes corporation:

The term "Court of Chancery" or "court" means the Court of Chancery in England or Ireland, as the case requires:

The term "Gazette" means, with respect to England, the *London Gazette*, and with respect to Ireland the *Dublin Gazette*.

Protection of Rolling Stock and Plant.

Restriction on
execution
against per-
sonal property
of company.

4. The engines, tenders, carriages, trucks, machinery, tools, fittings, materials, and effects, constituting the rolling stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops, shall

not, after their railway or any part thereof is open for public traffic, be liable to be taken in execution at law or in equity at any time after the passing of this Act, and* before the first day of September one thousand eight hundred and sixty-eight, where the judgment on which execution issues is recovered in an action on a contract entered into after the passing of this Act, or in an action not on a contract commenced after the passing of this Act; but the person who has recovered any such judgment may obtain the appointment of a receiver, and, if necessary, of a manager, of the undertaking of the company, on application by a petition in a summary way to the Court of Chancery in England or in Ireland, according to the situation of the railway of the company; and all money received by such receiver or manager shall, after due provision for the working expenses of the railway and other proper outgoings in respect of the undertaking, be applied and distributed under the direction of the court in payment of the debts of the company and otherwise according to the rights and priorities of the persons for the time being interested therein; and on payment of the amount due to every such judgment creditor as aforesaid the court may, if it think fit, discharge such receiver or such receiver and manager.

30 & 31 Vict.
c. 127, s. 5.

* [Now made
perpetual by
38 & 39 Vict.
c. 31.]

The section applies to every company incorporated for the purpose of constructing or working a railway, though the railway may be a subordinate part of the undertaking (*G. N. Ry. Co. v. Tahourdin*, 13 Q. B. D. 320).

If the railway has been opened for traffic the section applies, although it is afterwards closed (*Midland Waggon Co. v. Potteries Ry. Co.*, 6 Q. B. D. 36).

The section does not apply, if the company has not commenced to acquire land or construct its railway (*In re Birmingham & Lichfield Junction Ry. Co.*, 18 Ch. D. 155).

This section gives new rights to judgment creditors, wholly independent of the fact whether the company had or had not rolling-stock to be taken in execution.

A judgment creditor is entitled to have a manager appointed in every case where the company is conducting its own traffic. The only evidence necessary upon the application for a manager, is an affidavit that the judgment is unsatisfied, and that the company is a going concern.

As a general rule, the directors of the company or some of them will be appointed managers (*In re Manchester & Milford Ry. Co.*; *Ex parte Cambrian Ry. Co.*, 49 L. J. Ch. 365; 14 Ch. D. 645).

Where the company had, after the passing of this Act, given to their secretary a certificate of indebtedness in respect of services performed before the Act, and the secretary had recovered judgment, he was held entitled to a receiver (*In re Southern Ry. Co.*; *Ex parte Quinton*, 5 L. R. Ir. 165).

Where only part of the line is open, a receiver will be granted over that part with liberty to apply to extend the receiver over any part of the line subsequently opened (*In re Southern Ry. Co.*; *Ex parte Quinton*, 5 L. R. Ir. 165).

For the form of order under this section, see Pemberton, 703 (*Re Stafford & Ulloxeter Ry. Co.*, W. N. 1868, 113; Seton, 4th ed. 422. See too *Re Beddgelert Ry. Co.*, 19 W. R. 427).

The appointment of a receiver under this section does not affect the rights of a creditor to get in unpaid calls, and probably the receivership does not extend to such calls (*In re Birmingham & Lichfield Junction Ry. Co.*, 18 Ch. D. 155).

Hire of rolling-stock is a working expense under this section (*In re Cornwall Minerals Ry. Co.*, W. N. 1882, 132; 48 L. T. 41).

A claim for rails for making the line comes under the head of debts, and not under "working expenses" and other proper outgoings (*In re Naram & Kingscourt Ry. Co.*; *Ex parte Price*, 17 L. R. Ir. 398).

Dock Com-
pany with
power to make
railway.

5. If in any case where property of a company has been taken in execution a question arises whether or not it is liable to be so taken notwithstanding this Act, the same may be heard and

Determina-
tion of ques-
tions respect-
ing execu-
tions.

30 & 31 Vict.
c. 137,
ss. 6—8.

determined on an application by either party by summons in a summary way to the court out of which the execution issued, or if the court is one of the superior courts of law, then to a judge of any one of those courts, and such determination shall be final and binding.

Arrangements.

Preparation
and filing of
scheme of ar-
rangement.

6. Where a company are unable to meet their engagements with their creditors the directors may prepare a scheme of arrangement between the company and their creditors (with or without provisions for settling and defining any rights of shareholders of the company as among themselves, and for raising, if necessary, additional share and loan capital, or either of them), and may file the same in the Court of Chancery in England or in Ireland, according to the situation of the principal office of the company, with a declaration in writing under the common seal of the company to the effect that the company are unable to meet their engagements with their creditors, and with an affidavit of the truth of such declaration made by the chairman of the board of directors and by the other directors, or the major part in number of them, to the best of their respective judgment and belief.

Arrangement
with creditors.

Arrangement with creditors must be the main object of the scheme. A scheme providing for raising a large loan capital without any provisions for the payment of creditors will not be sanctioned (*In re Letterkenny Ry. Co.*, 1 R. 4 Eq. 538).

Additional not
substitutional
capital.

This section allows the raising of additional, not substitutional, share and loan capital (*In re Bristol & N. Somerset Ry. Co.*, 16 W. R. 1112; 6 Eq. 448, 454).

Irredeemable
debentures.

A scheme for converting mortgages and bonds into irredeemable debenture stock is within the scope of this section (*In re Irish N. W. Ry. Co.*, 1 R. 2 Eq. 425; *ib.* 3 Eq. 190).

Votes to
debenture
holders.

This section does not authorize the giving of votes to debenture holders, which would be contrary to the provisions of the Companies Clauses Act, 1863, s. 31 (*Re Stafford & Uttoxeter Ry. Co.*, 41 L. J. Ch. 777).

Stay of ac-
tions.

7. After the filing of the scheme, the court may, on the application of the company on summons or motion in a summary way, restrain any action against the company on such terms as the court thinks fit.

Stay of pro-
ceedings.

The court has jurisdiction under this section, while the scheme is maturing, to stay proceedings by creditors and unpaid landowners; but it will exercise the jurisdiction only if assured that the scheme is proposed in good faith, and that it will, if confirmed, afford a reasonable prospect of providing for the claims of creditors (*In re Cambrian Ry. Co.'s Scheme*, 3 Ch. 278).

Proceedings may be stayed even if more than three months have elapsed since the filing of the scheme, and no extended time has been allowed by the court under section 17 (*Robertson v. Wrexham Mold & Connah's Quay Ry. Co.*, 17 W. R. 137).

Proceedings by an unpaid landowner who has brought an action for specific performance will be stayed only upon the terms of the company submitting to a decree (*Robinson v. Wrexham Mold & Connah's Quay Ry. Co.*, 17 W. R. 137. See *Griffith v. Cambrian Ry. Co.*, 17 W. R. 979. See too *In re Parry & Jones*, 18 W. R. 416).

The section
spent where
scheme en-
rolled.

The power of proceeding under this section is gone when the scheme has been enrolled (*In re Potteries Shrewsbury & N. Wales Ry. Co.*, 5 Ch. 67).

After enrolment, an action must be brought to restrain a person bound by the scheme from asserting the right he would have had independently of the scheme (*ib.*).

Notice in
Gazette.

8. Notice of the filing of the scheme shall be published in the Gazette.

9. After such publication of notice no execution, attachment, or other process against the property of the company shall be available without leave of the court, to be obtained on summons or motion in a summary way.

30 & 31 Vict.
c. 127,
ss. 9—14.

Stay of execu-
tions, &c.

After enrolment, the leave of the court under this section is unnecessary (*In re Potteries Shrewsbury & N. Wales Ry. Co.*, 5 Ch. 67).

Nor is leave necessary after a scheme has been heard and dismissed (*Re Bristol & N. Somerset Ry. Co.*, 20 L. T. N. S. 70).

After publication of the scheme, creditors must obtain the leave of the court before they can issue execution upon a writ of *sci. fa.* against a shareholder in respect of unpaid calls upon his shares (*In re Devon & Somerset Ry. Co.*, 6 Eq. 610).

Leave must be obtained in that branch of the court in which the scheme has been filed (*Dean & Chapter of Christ Church v. E. & W. Junction Ry. Co.*, 17 W. R. 819).

It has been held that a person holding debentures issued under the provisions of an arrangement Act creating a suspense period, during which no proceedings were to be taken without the leave of the court, except in respect of liabilities contracted after the passing of the Act, could not bring an action on his debenture within the suspense period without leave of the court (*London Financial Association v. Wrexham Mold & Connah's Quay Ry. Co.*, 18 Eq. 566).

As to the terms upon which leave to bring an action during the suspense period will be refused, see *In re Teign Valley Act*, W. N. 1881, 172.

10. The scheme shall be deemed to be assented to by the holders of mortgages or bonds issued under the authority of the company's special Acts when it is assented to in writing by three-fourths in value of the holders of such mortgages or bonds, and shall be deemed to be assented to by the holders of debenture stock of the company when it is assented to in writing by three-fourths in value of the holders of such stock.

Assent by
mortgagees,
&c.

11. Where any rent-charge or other payment is charged on receipts of or is payable by the company in consideration of the purchase of the undertaking of another company, the scheme shall be deemed to be assented to by the holders of such rent-charge or other payment when it is assented to in writing by three-fourths in value of such holders.

Assent by
holders of
rent-charge,
&c.

12. The scheme shall be deemed to be assented to by the guaranteed or preference shareholders of the company when it is assented to in writing as follows:—If there is only one class of guaranteed or preference shareholders, then by three-fourths in value of that class, and if there are more classes of guaranteed or preference shareholders than one, then by three-fourths in value of each such class.

Assent by
preference
shareholders.

An Act conferring upon preference shareholders the same right of voting at meetings as that possessed by ordinary shareholders does not abolish the necessity for the consent in writing of preference shareholders under this section (*Re Cambrian Ry. Co.*, 19 W. R. 871; 24 L. T. N. S. 417).

13. The scheme shall be deemed to be assented to by the ordinary shareholders of the company when it is assented to at an extraordinary general meeting of the company specially called for that purpose.

Assent by
ordinary
shareholders.

14. Where the company are lessees of a railway the scheme

Assent by

30 & 31 Vict.
c. 127,
ss. 15—18.

leasing com-
pany.

shall be deemed to be assented to by the leasing company when it is assented to as follows:—

In writing by three-fourths in value of the holders of mortgages, bonds, and debenture stock of the leasing company;

If there is only one class of guaranteed or preference shareholders of the leasing company, then in writing by three-fourths in value of that class; and if there are more classes of guaranteed or preference shareholders in the leasing company than one, then in writing by three-fourths in value of each such class;

By the ordinary shareholders of the leasing company at an extraordinary general meeting of that company specially called for that purpose.

Assent of cre-
ditors, &c., not
affected, un-
necessary.

15. Provided that the assent to the scheme of any class of holders of mortgages, bonds, or debenture stock, or of any class of holders of a rent-charge or other payment as aforesaid, or of any class of guaranteed or preference shareholders, or of a leasing company, shall not be requisite in case the scheme does not prejudicially affect any right or interest of such class or company.

Application
for confirma-
tion of scheme.

16. If at any time within three months after the filing of the scheme, or within such extended time as the court from time to time thinks fit to allow, the directors of the company consider the scheme to be assented to as by this Act required, they may apply to the court by petition in a summary way for confirmation of the scheme.

Notice of any such application, when intended, shall be published in the *Gazette*.

The court may amend and alter the scheme (*In re Manchester & Milford Ry. Co.*, W. N. 1881, 121).

Confirmation
of scheme.

17. After hearing the directors, and any creditors, shareholders, or other parties whom the court thinks entitled to be heard on the application, the court, if satisfied that the scheme has been within three months after the filing of it, or such extended time (if any) as the court has allowed, assented to as required by this Act, and that no sufficient objection to the scheme has been established, may confirm the scheme.

Debenture-holders who are bound under section 10 can only be heard in opposition to the scheme if they can make out a case of fraud (*In re E. & W. Junction Ry. Co.*, 8 Eq. 87).

Opposition of
creditors not
material.
Creditors must
not be pre-
judiced.

Creditors not being bound by the scheme, it would seem that their opposition would be ineffectual unless they can show that the scheme materially prejudices their chance of payment (*In re E. & W. Junction Ry. Co.*, 8 Eq. 87).

But the court will not sanction a scheme which in terms proposes to bind creditors to take fully paid-up shares in satisfaction of their debts (*In re Bristol & N. Somerset Ry. Co.*, 6 Eq. 448).

And if they can show that the scheme directly prejudices their chance of payment, it seems the court would not sanction it (*Re Somerset & Dorset Ry. Co.*, 18 W. R. 332).

Enrolment
and effect of
scheme.

18. The scheme when confirmed shall be enrolled in the court, and thenceforth the same shall be binding and effectual to all

intents, and the provisions thereof shall, against and in favour of the company and all parties assenting thereto or bound thereby, have the like effect as if they had been enacted by Parliament.

30 & 31 Vict.
c. 127.
ss. 19—21.

This section makes the scheme binding only upon persons assenting to it or bound by it; that is, those who have actually agreed to it, or those who, not having agreed to it, are declared by the previous sections to be bound; in other words, the majority, and the minority of the various classes whose votes are taken (*per Lord Cairns, In re Cambrian Rys. Co.'s Scheme*, 3 Ch. 278, p. 296).

Who bound
by scheme.

Therefore, outside creditors and unpaid landowners are not bound by the scheme (*In re Cambrian Rys. Co.'s Scheme*, 3 Ch. 278; *Stevens v. Mid-Hants Ry. Co.*, 8 Ch. 1064. See *Stevens v. Cork & Kinsale Junction Ry. Co.*, 1 R. 6 Eq. 604; *In re Navan & Kingscourt Ry. Co.*; *Ex parte Price*, 17 L. R. Ir. 398).

But a creditor who dissents from the scheme cannot claim that by virtue of it he has acquired priority over debenture holders who are bound by it (*Stevens v. Mid-Hants Ry. Co.*, *supra*).

As to what amounts to assent to a scheme, see *In re Navan & Kingscourt Ry. Co.*; *Ex parte Price*, 17 L. R. Ir. 398.

The secretary of the company to whom wages are due is no more bound by the scheme than any other outside creditor, though he may not have opposed it (*Re Teign Valley Ry. Co.*, 17 W. R. 817).

Where the debenture holders are bound by the scheme, a debenture holder who has obtained judgment before the scheme has been proposed is bound by it (*Potteries Shrewsbury & N. Wales Ry. Co. v. Minor*, 6 Ch. 621).

The court has, it seems, jurisdiction to enlarge the time for enrolment where a petition for rehearing is intended to be presented independently of the rules (*In re Devon & Somerset Ry. Co.*, 6 Eq. 615).

Time for en-
rolment.

19. Notice of the confirmation and enrolment of the scheme shall be published in the *Gazette*.

Notice of con-
firmation of
scheme.

20. The company shall at all times keep at their principal office printed copies of the scheme when confirmed and enrolled, and shall sell such copies to all persons desiring to buy the same at a reasonable price, not exceeding sixpence for each copy.

Company to
keep printed
copies of
scheme for
sale.

If the company fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred, which penalties shall be recovered and applied as penalties under The Railways Clauses Consolidation Act, 1845, are recoverable and applicable.

Penalty for
neglect.

21. Where a company whose principal office is situate in England have a railway or part of a railway in Scotland the following provisions shall have effect:—

Provision for
cases where
railways or
part in Scot-
land.

- (1.) Any scheme under this Act shall be filed in the Court of Chancery in England;
- (2.) Where, after the filing of the scheme, any person who is not amenable to the jurisdiction of the Court of Chancery in England brings any action against the company in Scotland, the Court of Session may, on the application of the company by petition in a summary way, sist, stay or interdict the same on such terms as the court thinks fit;
- (3.) Notice of the filing of the scheme shall be published in the *Edinburgh Gazette*, and after such publication no

30 & 31 Vict.
c. 127,
ss. 22—24.

diligence against the property of the company in Scotland shall be available for any person who is not amenable to the jurisdiction of the Court of Chancery in England without the leave of the Court of Session, to be obtained on petition in a summary way ;

In this section the term "Court of Session" means either division of the Court of Session, or in time of vacation the Lord Ordinary officiating on the bills.

General orders
for regulation
of practice in
Court of
Chancery.

22. The Lord Chancellor of Great Britain, with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice-Chancellors, or any two of those judges, and the Lord Chancellor of Ireland, with the advice and assistance of the Lord Justice of Appeal in Chancery and the Master of the Rolls, or one of them, may from time to time make general orders for the regulation of the practice of the Courts of Chancery in England and Ireland respectively under this Act.

Loan Capital.

Priority of
mortgages.

23. All money borrowed or to be borrowed by a company on mortgage or bond or debenture stock under the provisions of any Act authorising the borrowing thereof shall have priority against the company and the property from time to time of the company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act; Provided always, that this priority shall not affect any claim against the company in respect of any rentcharge granted or to be granted by them in pursuance of The Lands Clauses Consolidation Act, 1845, or The Lands Clauses Consolidation Acts Amendment Act, 1860, or in respect of any rent or sum reserved by or payable under any lease granted or made to the company by any person in pursuance of any Act relating to the company which is entitled to rank in priority to, or *pari passu* with, the interest or dividends on the mortgages, bonds and debenture stock ; nor shall anything hereinbefore contained affect any claim for land taken, used or occupied by the company for the purposes of the railway, or injuriously affected by the construction thereof, or by the exercise of any powers conferred on the company.

The words "anything hereinbefore contained" mean anything before contained in this section, and not in the previous sections, so that landowners are not excepted from the operation of sections 7 and 9 (*In re Cambrian Ry. Co.'s Scheme*, 3 Ch. 278, 297).

As to the priorities of debentures of different issues, see *Harrison v. Cornwall Minerals Ry. Co.*, 16 Ch. D. 66 ; 18 Ch. D. 334 ; 8 App. C. 780.

Power to issue
debenture
stock, subject
to Part III. of
26 & 27 Vict.
c. 118.

24. Any company may create and issue debenture stock, subject to the provisions of Part III. of The Companies Clauses Act, 1863 (relating to debenture stock), and the said Part III. shall, with respect to any special Act of a company incorporating that part, whether passed or to be passed, be read and have effect as if the following words, that is to say, "not exceeding the rate pre-

scribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum," had not been inserted in section twenty-two of that Act; and for the purposes of the present section this Act shall be deemed a special Act passed incorporating that part; and any special Act of a company passed before the passing of this Act prescribing any rate shall be read and have effect as if no rate had been prescribed therein.

30 & 31 Vict.
c. 127,
ss. 25—29.

25. Provided that any debenture stock the creation whereof has been authorised by a company, but which has not been issued, before the passing of this Act, shall not be issued on any terms other than those whereon it might have been issued if this Act had not been passed, unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorised by the company in manner provided in section twenty-two of the Companies Clauses Act, 1863.

Restriction on rate of interest on debenture stock already authorised.

26. Money borrowed by a company for the purpose of paying off, and duly applied in paying off, bonds or mortgages of the company given or made under the statutory powers of the company, shall, so far as the same is so applied, be deemed money borrowed within, and not in excess of such statutory powers.

Advances to meet debentures falling due.

Share Capital.

27. Section twenty-one of The Companies Clauses Act, 1863, shall, with respect to any special Act of a company incorporating Part II. of that Act, whether passed or to be passed, be read and have effect as if the following words, that is to say, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

Power to issue shares or stock at discount.

28. Any shares forming part of the capital (whether original or additional) authorised to be raised by any special Act of a company passed before the present session, which have not been disposed of, may be disposed of in manner provided by Part II. of The Companies Clauses Act, 1863, as amended by this Act, and that part, as so amended, shall be deemed incorporated with such special Act accordingly.

Power to issue residue of original or other capital at discount.

29. Provided that any shares the creation whereof has been authorised by a company, but which have not been issued, before the passing of this Act, shall not be issued on any terms other than those whereon the same might have been issued if this Act had not been passed, unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorised by the company in manner provided by Part II. of The Companies Clauses Act, 1863.

Restriction on issuing at discount of shares or stock already authorised.

30 & 31 Vict.
c. 127,
ss. 30, 31.

Audit of rail-
way accounts.

30. No dividend shall be declared by a company until the auditors have certified that the half-yearly accounts proposed to be issued contain a full and true statement of the financial condition of the company, and that the dividend proposed to be declared on any shares is *bond fide* due thereon after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the auditors; but if the directors differ from the judgment of the auditors with respect to the payment of any such expenses out of the revenue of the half-year, such difference shall, if the directors desire it, be stated in the report to the shareholders, and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall for the purposes of the dividend be final and binding; but if no such difference is stated, or if no decision is given on any such difference, the judgment of the auditors shall be final and binding; and the auditors may examine the books of the company at all reasonable times, and may call for such further accounts, and such vouchers, papers, and information, as they think fit, and the directors and officers of the company shall produce and give the same as far as they can, and the auditors may refuse to certify as aforesaid until they have received the same; and the auditors may at any time add to their certificate, or issue to the shareholders independently at the cost of the company, any statement respecting the financial condition and prospects of the company which they think material for the information of the shareholders.

Abandonment.

Provisions of
13 & 14 Vict.
c. 83, as to
abandonment
of railways to
apply to all
companies
authorised to
make railways
before this
session.

31. The Abandonment of Railways Act, 1850, shall extend and apply to all companies authorised to make railways by Act of Parliament passed before the present session, subject and according to the following provisions:

- (1.) *Repealed by 32 & 33 Vict. c. 114, s. 10.*
- (2.) Section thirty-five of the said Act of 1850 shall be read and have effect as if the date of the twenty-first day of May, one thousand eight hundred and sixty-seven were therein substituted for the date of the eleventh day of February, one thousand eight hundred and fifty:
- (3.) Nothing in the said Act of 1850 or this Act shall be deemed to make it obligatory on the Board of Trade to authorise the abandonment of a railway or part of a railway on any application in that behalf, and the Board of Trade shall not authorise such abandonment in any case unless it appears to them just and expedient so to do, and the Board of Trade may, if they think fit, refuse in any case to authorise such abandonment, except on condition of the money deposited as security for the completion of the railway, or the stocks, funds, or securities on which the same is invested, or the money secured by any bond conditioned for completion of the railway, or

for payment of money in default thereof, being applied as part of the assets of the company.

30 & 31 Vict.
c. 127,
ss. 32—34.

There is nothing in this section to enable a creditor to obtain a winding-up order after the railway has been abandoned (*In re N. Kent Ry. Co.*, 17 W. R. 789; 8 Eq. 356. See *In re Kensington Station Act*, 20 Eq. 197).

Where a person before the passing of this Act gave a bond to the Crown conditioned to be void upon the completion of a railway, and at the same time received an indemnity against all liability he might incur under the bond, it was held that he was entitled to be recouped a sum paid by him under an order of the Board of Trade made under this section (*Webster v. Petre*, 4 Ex. D. 127).

32. Where it is shown to the satisfaction of the Board of Trade, with respect to a company authorised to make a railway by Act of Parliament passed before the present session, that no part, or a part less than three-fifths, of the share capital of the company, has been subscribed, the Board of Trade may, if they think fit, proceed under the said Act of 1850, as extended by this Act, on the application of any person named in the special Act incorporating the company as a member or director thereof, or of any person named in the warrant or order directing payment of any deposit under any standing order of either house of parliament, or of any person who has lent the amount of such deposit, or any part thereof, or has entered into any bond conditioned for the completion of the railway, or for payment of any money in default thereof, and without the preliminary consent of a meeting of shareholders of the company.

Abandonment where three-fifths of capital not subscribed.

33. The authority given under this Act for the abandonment by a company of any railway or part of a railway shall not affect the right of the owner or occupier of any lands that have been temporarily occupied by the company to receive compensation, in accordance with the provisions of the Railways Clauses Consolidation Act, 1845, for such temporary occupation, or for any loss, damage, or injury that has been sustained by him by reason thereof, or of the exercise as regards such lands of any of the company's powers.

Compensation for damage to land by entry, &c.

34. Where a warrant for abandonment is granted under the Abandonment of Railways Act, 1850, as extended by this Act, the Commissioners of her Majesty's Treasury may cancel and deliver up any bond entered into by or on behalf of a railway company for securing the completion of a railway, or, in case the abandonment be of part of the railway only, may cancel and deliver up such bond on receiving another bond in lieu thereof conditioned for payment of a due proportionate part of the amount secured by such former bond; and any money remaining deposited as security for the completion of the railway, or the stocks, funds, or securities in which the same is invested, or any bank annuities, stocks, funds, securities, or exchequer bills remaining deposited as such security, or in case the abandonment authorised is of part only of a railway then such proportionate part as the Board of Trade thinks fit of such money, stocks, funds, securities, annuities,

Cancellation of bonds for completion of railways, and release of deposit.

30 & 31 Vict.
c. 127,
ss. 35-37.

or exchequer bills, shall be paid, transferred, or delivered out to the persons who would be entitled to receive the same if the railway had been completed and opened for public traffic; and the Court of Chancery shall, on the application of those persons, order payment, transfer, or delivery out thereof accordingly, on a certificate of the Board of Trade certifying that such a warrant for abandonment has been granted.

Protection for
Board of
Trade in case
of error.

35. The issuing in any case of any warrant or certificate relating to deposit, or to any money, stocks, funds, securities, bank annuities, or exchequer bills deposited, or any error in any such warrant or certificate, or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the money, stocks, funds, securities, bank annuities, or exchequer bills deposited, or the interest of or dividends on the same, or any part thereof respectively.

Purchase of Lands.

Amendment
(as to railway
companies) of
sect. 85 of
8 & 9 Vict.
c. 18.

36. Where after the passing of this Act a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect:

- (1.) The surveyor to be appointed as in that section provided shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade:
- (2.) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company:
- (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation:
- (4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved of by two justices, be approved of by the Board of Trade after hearing the parties.

In every case where a company intends to enter under section 85 of the Lands Clauses Consolidation Act, after the 20th August, 1867 (the date of this Act), the surveyor must be appointed under this section, although a valuation under section 85 may have been previously made (*Field v. Carnarvon & Llanberis Ry. Co.*, 5 Eq. 190; 35 L. J. Ch. 176).

If the landowner makes no objection to the sureties, the parties need not be heard before the Board of Trade (*Loosemore v. Tverton, &c. Ry. Co.*, 22 Ch. D. 25, 40; 9 App. O. 480).

37 is repealed by 38 & 39 Vict. c. 66.

ORDER OF COURT.

30 & 31 Vict.
c. 127.
Orders.

Friday, the 24th day of January, 1868.

THE RIGHT HONOURABLE FREDERIC BARON CHELMSFORD, Lord High Chancellor of Great Britain, with the advice and assistance of the RIGHT HONOURABLE LORD JOHN ROMILLY, Master of the Rolls, the RIGHT HONOURABLE HUGH MCCALMONT LORD CAIRNS, one of the Lords Justices of the Court of Appeal in Chancery, the HONOURABLE THE VICE-CHANCELLOR SIR JOHN STUART, the HONOURABLE THE VICE-CHANCELLOR SIR WILLIAM PAGE-WOOD, and the HONOURABLE THE VICE-CHANCELLOR SIR RICHARD MALINS, doth hereby, in pursuance and execution of the powers given by the statute 30th and 31st Victoria, chapter 127, and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

PART I.

SCHEMES OF ARRANGEMENT.

Preparation and Filing of Scheme.

1. Every scheme to be filed in the Court of Chancery, pursuant to the statute 30th and 31st Victoria, chapter 127, section 6, and every declaration, affidavit, petition, summons, notice, or other proceeding relative thereto, shall be intituled in the matter of "The Railway Companies Act, 1867," and in the matter of the company in question.

2. Every such scheme shall be marked, either with the words "Lord Chancellor," and the name of one of the Vice-Chancellors, or with the words "Master of the Rolls," and the matter of such scheme (unless removed by some special order of the Lord Chancellor or the Lords Justices), shall accordingly be attached to the court of such Vice-Chancellor, or to the court of the Master of the Rolls, as the case may be, in like manner and for the same purposes as causes are attached to a particular court.

3. Every scheme to be filed as aforesaid shall be printed on paper of the same size and description, and in the same style and manner, as bills in Chancery are required to be printed, or shall be written bookwise upon paper of the same size and description as last aforesaid.

4. Every declaration and affidavit to be filed as mentioned in the 6th section of the said Act, shall be written bookwise upon paper of the same size and description as that on which bills are printed.

30 & 31 Vict.
c. 137.
Orders.

5. Every such scheme shall be filed in the office of the Clerks of Records and Writs, and the declarations and affidavit required by section 6 of the said Act shall be annexed to such scheme and filed at the same time therewith, and the Clerks of Records and Writs shall not file any such scheme, unless accompanied by such declaration and affidavit.

6. There shall be indorsed upon every scheme so filed as aforesaid the name and address of the solicitor and London agent (if any) of the company, and also the address for service of such solicitor in cases where an address for service is required by the general orders of the court.

7. Where a written scheme is filed the person bringing the same to be filed, shall, at the same time, leave with the Clerks of Records and Writs a fair copy thereof, and the Clerks of Records and Writs are to examine such copy with the scheme filed, and return it so examined with a certificate thereon that it is correct and proper to be printed.

8. The directors are then to cause the scheme to be printed from such certified copy, on paper of the same size and description, and in the same type, style, and manner, as bills are required to be printed, and, before the expiration of four days from the filing of the scheme are to leave a printed copy thereof with the Clerks of Records and Writs, with a written certificate thereon by the solicitor of the company that such print is a true copy of the scheme so certified, and after the expiration of such four days no evidence of the scheme having been filed shall be admissible until such printed copy thereof has been filed.

9. Every fifth line of each page of a printed scheme shall be numbered.

Copies of Scheme.

10. At any time after the expiration of four days from the filing of a scheme, whether printed or written, any person may demand, by a requisition in writing, delivered at the principal office of the company, or at the office of their solicitor, or of his London agent (if any) any number, not exceeding ten, of printed copies of the scheme, and the copies so required shall on such demand be delivered to the person so requiring the same, with a written certificate thereon by the solicitor of the company that they are true copies of the scheme filed.

11. Every such copy is on delivery to be paid for at the rate of one halfpenny per folio, except in the case provided for by the 20th section of the said Act, in which case it is to be paid for at the rate prescribed by the said Act.

Notice of Filing Scheme.

12. The notice to be published in the Gazette of the filing of the scheme shall be signed by the solicitor of the company, or his

London agent, and shall state whether the scheme contains any provisions for settling and defining any rights of shareholders among themselves, or for raising any and what amount of share or loan capital, and which, and shall set forth the name and address of the solicitor and London agent (if any) of the company, and may be in the Form No. 1 in the 3rd Schedule hereto, with such variations as the circumstances of the case may require.

30 & 31 Vict.
c. 127.
Orders.

Certificate of Filing.

13. When a scheme has been filed, one of the Clerks of Records and Writs shall, at the request of any person, give and sign a certificate of the filing thereof, or of the filing of a printed copy thereof; and such certificate may be in the following form, with such variations as the circumstances of the case may require.

*In the matter of the Railway Companies Act, 1867,
and in the matter of the
Railway Company.*

I do hereby certify that a [printed or written, as the case may be] scheme of arrangement between the above-named company and their creditors, under the statute 30 & 31 Victoria, chapter 127, section 6, was, on the day of , 18 , duly filed in the High Court of Chancery in England, together with the declaration and affidavit required by the said statute [and that a printed copy of such scheme was, on the day of , duly filed in the said court pursuant to the general order of court made in that behalf], as appears by my book. Dated, &c.

A. B.,
Clerk of Records and Writs, of the High
Court of Chancery in England.

Restraining Actions after Scheme Filed.

14. No order, under section 7 of the said Act, for restraining an action against the company by reason of a scheme having been filed, shall be made, except on an undertaking by the company to be answerable in such damages (if any) as the court or the judge in chambers may think fit to award in the event of the plaintiff being ultimately held entitled to proceed with such action; and on such further terms (if any) as the court or judge may think reasonable.

Petition for Confirmation of Scheme.

15. Every petition for confirmation of a scheme shall be presented by the directors or the major part of them. Such petition shall not set forth the scheme, but only refer thereto; and may be in the Form No. 2, in the third schedule hereto, with such variations as the circumstances of the case may require.

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30 & 31 Vict.
c. 127.
Orders.

16. The petitioners presenting such petition as aforesaid shall, for the purposes of such petition, be treated as representing the company, and the company shall not otherwise appear on the hearing of such petition.

17. When any petition to confirm a scheme is presented, the directors shall apply to the judge in chambers to appoint the day on which the same is to come into the paper for hearing, such day not to be before the expiration of three weeks from the time of such application, and shall cause a notice of the presentation thereof to be inserted as follows (that is to say) :—

- (1.) In the case of a company whose principal office is within ten miles from the General Post Office, in the *London Gazette*; and in such two London daily morning newspapers as the judge in chambers shall direct.
- (2.) In the case of any other company, in the *London Gazette*, and in such two local newspapers circulating in the district where the principal office of such company is situate, as the judge in chambers shall direct.

Such notice shall state the day on which the scheme was filed, and the day on which the petition was presented, and the day on which the same is directed to come into the paper for hearing, and the name and address of the solicitor and London agent (if any) of the company, and may be in the Form No. 3 in the third schedule hereto, with such variations as the circumstances of the case may require.

18. The petition shall not come on to be heard until at least fourteen clear days after the insertion of such notice as aforesaid. Such notice shall, at least once in every entire week, reckoned from Sunday morning to Saturday evening, which shall have elapsed between the time of the first insertion thereof, and the day on which such petition is directed to come into the paper for hearing, be again inserted in such two London or local newspapers as aforesaid on such day or days as the judge in chambers shall direct.

19. Any creditor, shareholder or other party whose rights or interests are affected by such scheme, and who shall be desirous to be heard in opposition to the confirmation thereof, shall, at least two clear days before the day on which the petition for confirmation is directed to come into the paper for hearing, enter an appearance at the office of the Clerks of Records and Writs; and, in default of so doing, shall not be entitled to be heard, unless by the special leave of the court.

20. Any person so entering an appearance shall be deemed to have submitted himself to the jurisdiction of the court as to the payment of costs and otherwise.

[21—28 are annulled by the Rules of the Supreme Court, April, 1880, Order LXIV., Rule 1, and the following rules are substituted.]

Mode of Enrolment of Scheme.

30 & 31 Vict.
c. 127.
Orders.

2. A scheme under The Railway Companies Act, 1867, shall be enrolled in the enrolment department of the central office.

Conditions of Enrolment of Scheme.

3. A scheme under that Act shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of thirty days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the order made pursuant to that Act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment.

PART II.

PROTECTION OF ROLLING STOCK AND PLANT.

29. Every petition under "The Railway Companies Act, 1867," section 4, shall be intituled in the matter of the Act and in the matter of the company in question, and shall be marked either with the words "Lord Chancellor," and the name of one of the Vice-Chancellors, or with the words "Master of the Rolls."

30. Such petition shall be served on the company only, but the court may at the hearing, if it shall so think fit, adjourn the same for the purpose of service on such other parties, if any, as the court shall think fit.

31. Every order appointing a receiver or manager under the last-mentioned section shall direct such accounts and inquiries as the court may think fit for ascertaining the debts of the company and the rights and priorities of the persons interested in the monies to come to the hands of such receiver or manager.

32. Every summons in Chancery under "The Railway Companies Act, 1867," section 5, shall be intituled in the matter of the said Act and in the cause or matter in which the execution in question was issued, and such summons shall be issued out of the chambers of the judge to whose court such cause or matter is attached, and such rules and practice of the Court of Chancery as are applicable to summonses for the purpose of proceedings not originating in chambers and to the proceedings thereunder shall be applicable to such summons and the proceedings thereunder.

PART III.

GENERAL PROVISIONS.

33. All orders made in chambers under "The Railway Companies Act, 1867," shall be drawn up in chambers unless specially directed to be drawn up by the registrar, and shall be entered in the same manner and in the same office as other orders drawn up in chambers.

34. In cases not expressly provided for by the said Act or by the rules of this order, the general orders and practice of the court (including the course of proceeding and practice in the judges' chambers, and the course of proceeding and practice as to rehearings before the same judge, or before the Lord Chancellor or Lords Justices) shall, so far as such general orders and practice are applicable and not inconsistent with the said Act or this order, apply to all proceedings in the Court of Chancery under the said Act.

35. The power of the court and of the judge in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, shall be the same in proceedings in Chancery under the said Act, as in proceedings under the ordinary jurisdiction of the court.

36. Solicitors shall be entitled to charge and be allowed the fees set forth or referred to in the 1st Schedule hereto unless the court or judge shall otherwise specially direct.

37. The fees of court set forth and referred to in the 2nd Schedule hereto shall be paid in relation to proceedings in Chancery under the said Act, and shall be collected by means of stamps in manner provided by the general orders of the court.

38. The general interpretation clause contained in the Consolidated Orders of the Court of Chancery shall extend and apply to this order, and this order shall be deemed one of the general orders of the court.

39. This order shall come into operation on Monday the 3rd day of February, 1868, and shall apply to all schemes filed under the said Act, and to all proceedings in Chancery to be had under the same Act: Provided always that all proceedings taken under the said Act before this order shall have come into operation shall have the same validity as they would have had if this order had not been made.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

For all duties performed under the Railway Companies Act, 1867, such of the fees on the higher scale authorised by the 2nd Rule of the 38th of the Consolidated Orders and the regulations as to solicitors' fees subjoined thereto, as are applicable, unless the court or judge shall otherwise specially direct.

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judges' Chambers.

Such of the fees as are directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Registrar's Office.

Such of the fees as are directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Record and Writ Clerks' Office.

	£	s.	d.
For filing every scheme of arrangement	1	0	0
For every certificate of filing a scheme of arrangement .	0	5	0
Such other fees as are directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.			

In the Examiners' Office.

Such of the fees as are directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Taxing Master's Office.

Such of the fees as are directed to be paid and collected by the 2nd Rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

Order of Court.

30 & 31 Vict.
c. 127.
Orders.

In the Office of the Lord Chancellor's Principal Secretary.

For every petition £1 0 0

In the Office of the Secretary at the Rolls.

For every petition 1 0 0

THE THIRD SCHEDULE.

No. 1. *Advertisement of Scheme.*

[See Rule 10.]

In the matter of the Railway Company ;
and in the matter of the Railway Companies
Act, 1867.

Notice is hereby given, that on the day of ,
18 , a scheme of arrangement between the above-named com-
pany and their creditors [*state here whether the scheme contains
or not any provisions for settling the rights of any and what classes
of shareholders as among themselves, or for raising additional share
or loan capital, and which, and to what extent*] was filed in the
Court of Chancery, and a copy of the said scheme will be furnished
to any person requiring the same by the undersigned, or at the
office of the company, at on payment of the regulated
charges for the same.

A. and B., of [agents for C. and D., of],
Solicitors for the company.

No. 2. *Petition to Confirm Scheme.*

[See Rule 15.]

In the matter of the Railway Company ;
and in the matter of the Railway Companies
Act, 1867.

To the Right Honourable the Lord High Chancellor of Great
Britain [*or, to the Right Honourable the Master of the Rolls, as the
case may be*].

The humble petition of directors of the above-named
company.

Sheweth :

That on the day of , the directors of the above-
named company filed in this honourable court a scheme of arrange-
ment between the above-named company and their creditors.

Your petitioners therefore humbly pray that the
scheme so filed as aforesaid may be confirmed by
the order of this honourable court.

And your petitioners will ever pray, &c.

No. 3. *Advertisement of Petition to Confirm a Scheme.*

30 & 31 Vict.
c. 127.
Orders.

[*See Rule 17.*]

In the matter of the Railway Company;
and in the matter of the Railway Companies
Act, 1867.

Notice is hereby given that a petition was, on the
day of , 18 , presented to the Lord Chancellor [*or* the
Master of the Rolls] by the directors of the above-named company,
praying the confirmation of a scheme of arrangement between the
said company and their creditors, filed in the Court of Chancery
on the day of . And that the said petition is
directed to be heard before the Vice-Chancellor Sir [*or*
before the Master of the Rolls] on the day of ,
18 , and any person whose interests are affected by such scheme,
and who may be desirous to oppose the making an order for the
confirmation thereof under the above Act, should enter an appear-
ance at the office of the Clerks of Records and Writs on or before
the day of , 18 , and appear by himself or
counsel at the hearing of the said petition. And a copy of the
scheme and petition will be furnished to any person requiring the
same by the undersigned, or at the office of the company at
 , on payment of the regulated charge for the same.

A. and B., of [agents for C. and D., of],
Solicitors for the petitioners.

CHELMSFORD, C.
ROMILLY, M. R.
CAIRNS, L. J.
JOHN STUART, V.-C.
W. P. WOOD, V.-C.
RICHARD MALINS, V.-C.

COURTS OF REFEREES OATHS ACT.

30 & 31 VICT. c. 136.

30 & 31 Vict.
c. 136,
ss. 1—3.

An Act to enable the Courts of Referees to administer Oaths and award costs in certain cases, in the same manner as Committees on Bills. [20th August, 1867.]

WHEREAS it is expedient to enable the courts of referees on private bills in certain cases to administer oaths and to award costs in the same manner as committees on private bills:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power of
court of re-
ferees to ad-
minister oaths
to witnesses.

1. Any court of referees may examine witnesses upon oath upon such matters relating to any bill as they may under any standing order or other order of the House of Commons be empowered to inquire into, and for that purpose may administer an oath to any such witness.

Witnesses
falsely depos-
ing guilty of
perjury.
Power to
award costs.

2. Any person examined as aforesaid who shall wilfully give false evidence shall be liable to the penalties of perjury.

3. Any court of referees on private bills, in cases in which, under any standing order or other order of the house, the referees may be empowered to inquire into the whole subject-matter of any such bill, and to report it, with or without amendments, to the house, may award costs in the same manner as select committees on private bills are empowered to award costs by an Act passed in the twenty-eighth year of the reign of her Majesty Queen Victoria, intituled "An Act for awarding Costs in certain Cases of Private Bills," and all the provisions of the said Act shall apply in the case of bills so referred to the referees.

THE COTTON STATISTICS ACT, 1868.

31 & 32 VICT. c. 33.

An Act for the Collection and Publication of Cotton Statistics.
[25th June, 1868.]

31 & 32 Vict.
c. 33,
ss. 1—6.

WHEREAS it would be of great public advantage if statistical information respecting the quantity of cotton imported into the United Kingdom, and the quantity removed (either by sea or land) from and to, and held in stock at, the several ports, were periodically obtained and published by authority: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. This Act may be cited for all purposes as the Cotton Statistics Act, 1868. Short title.

2. In this Act—

The term "forwarder" shall mean and include every owner or lessee of any railway, canal, or inland navigation who carries or conveys cotton for toll or other consideration from or to any port in the United Kingdom.

Interpretation
of terms.

3. Every forwarder shall on the fourth day of July, one thousand eight hundred and sixty-eight, and on the fourth day of every subsequent month, make a return in writing to the Board of Trade in such convenient form as the Board of Trade may order, showing the quantity of cotton forwarded or received by him or them from or to any port in the United Kingdom within the then last preceding month.

Forwarders
of cotton to
make monthly
returns to the
Board of
Trade.

4. The several returns made to the Board of Trade under this Act shall be published in the same manner as other statistical information is published by that board.

Publication of
information.

5. If any such forwarder be summoned by the Board of Trade to comply with the requirements of this Act, and fail to do so, he or they shall for every offence be liable on summary conviction to a penalty not exceeding twenty pounds.

Penalty.

6. It shall be lawful for her Majesty in council from time to time to make by order in council such provisions as seem fit for the better execution of this Act, and for otherwise procuring and publishing statistical information respecting the stock of and the importation of cotton into, and the exportation thereof from, and the transport and warehousing thereof within, the United Kingdom, and for the publication from time to time of such information. All such orders in council shall be published in the *London*, *Edinburgh*, and *Dublin* Gazettes, and shall be laid before both houses of Parliament.

Orders in
council for
execution of
Act, &c.

THE RAILWAYS ACT (IRELAND), 1868.

31 & 32 VICT. c. 70.

31 & 32 Vict.
c. 70. *An Act to amend "The Railways (Ireland) Act, 1851,"
"The Railways (Ireland) Act, 1860," and "The Rail-
ways (Ireland) Act, 1864," as to the Trial of Traverses.*
[31st July, 1868.]

14 & 15 Vict.
c. 70. WHEREAS by the twenty-sixth section of "The Railways
Act (Ireland), 1851," it is provided that where the party named
in any certificate of the amount of the price or compensation
ascertained by any award (or any party claiming under the party
so named) should be dissatisfied with the amount in such certificate
certified to be payable, and where any party claiming any interest
in any monies paid into court should be dissatisfied with the
amount of the price or compensation in respect of such monies,
and where any party interested in land adjoining any railway
should be dissatisfied with any award so far as respects any works
for the accommodation of lands thereby awarded to be made and
maintained by the company, or which such party might claim to
have so made and maintained, it should be lawful for such party,
at the assizes for the county in which the lands are situate, or,
where the lands are situate in the county of Dublin or county of
the city of Dublin, in the term next following the giving of such
certificate, or the payment of such money into court, or (if the
claim be only in respect of accommodation works) the making of
the award, or where such assizes are holden or such term begins
within less than twenty-one days after the giving of such certificate,
or the payment of such money, or the making of the award, then
at the next subsequent assizes, or in the next subsequent term (as
the case might be), upon giving ten days' notice in writing
previously to such assizes or term respectively to the secretary of
the company of the amount or the accommodation works intended
to be claimed, to have a traverse for damages entered in the crown
book in respect of such claim, and thereupon such traverse should
be tried in such manner, subject to such regulations, and with
such consequences, as in the said Act in that behalf respectively
mentioned :

23 & 24 Vict.
c. 97. And whereas by "The Railways Act (Ireland), 1860," the said
first-mentioned Act was amended and made perpetual :

And whereas by the first section of the Railways Act (Ireland), 1864, it is provided that in all cases where the amount of money which the arbitrator should have awarded to be paid by the company to any person in respect of any estate or interest in lands should exceed the sum of five hundred pounds it should be lawful for the company, if dissatisfied with such award, upon giving to such person within ten days next after the date of such award notice in writing of their intention to appeal therefrom, to have a traverse entered by the company in the crown book in respect of such award at the same time and in like manner in all respects as were provided with respect to traverses taken by persons dissatisfied with any award, and the like proceedings should be taken with respect to a traverse so taken by the company, and the verdict of the jury upon such traverse should have the like effect as in the case of a traverse taken by a person so dissatisfied :

31 & 32 Vict.
c. 70,
ss. 1—3.

27 & 28 Vict.
c. 71.

And whereas such traverses as aforesaid must at present be tried in the county or county of a city where the lands are situate ; and it is expedient to amend the law in that respect in the manner hereinafter mentioned :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Railways Traverse Act."

Short title.

2. Whenever either party shall be entitled and shall intend to have any such traverse entered under the said recited Acts, or any or either of them, or any Act already or hereafter incorporating the said Acts, or any of them, it shall be lawful for the other party to apply to the Court of Queen's Bench for an order directing such traverse to be entered and tried in some county other than the county or county of a city in which the lands are situate ; and if upon such application it shall appear to said court that it will be more convenient or proper or more in furtherance of justice that such traverse should be tried elsewhere than in the county or county of a city where the lands are situate, the said court may order such traverse to be entered and tried in some other county or county of a city to be specified in such order, and thereupon such traverse shall be entered and tried in such other county or county of a city in such manner, and subject to the like regulations, and with the same consequences, and the verdict and proceedings shall have the like effect, as if the lands were situate in the county or county of a city in which such traverse shall under such order be so entered and tried.

Provision for trial of traverse in county other than that in which lands are situate.

3. Such application may be made either before or after the ten days notice shall have been given, and before or after such traverse may have been entered for the county or county of a city where the lands are situate, and notwithstanding that such traverse may have been respited from an assizes or term previously to such application ;

When application for trial of traverse to be made.

31 & 32 Vict.
c. 70, ss. 4, 5.

and in case such order shall have been made after the entry of the traverse in the county or county of a city in which the lands are situate, no trial shall be had upon such entry. The said court may make such order as it may deem fit respecting the costs of such application, or any costs to be incurred by reason of such change of the place of trial or otherwise incidental to such order as aforesaid, and may, in making such order and in respect thereof, impose such terms upon either party as justice may require.

Construction
of Acts.

4. This Act and the said recited Acts shall be read together as one Act, and this Act shall be held to be incorporated with each of the said recited Acts in any Act already or hereafter incorporating the said recited Acts, or any of them, and shall apply to traverses of awards made before the passing of this Act in respect of which the right of traverse shall still subsist.

Jurisdiction
out of term
time.

5. The jurisdiction hereinbefore conferred upon the Court of Queen's Bench may out of term be exercised by any judge of that court, or any judge having for the time being jurisdiction to entertain and determine a motion to change the venue in any action depending in said court.

THE TELEGRAPH ACT, 1868.

31 & 32 VICT. c. 110.

An Act to enable her Majesty's Postmaster-General to acquire, work, and maintain Electric Telegraphs.

[31st July, 1868.]

31 & 32 Vict.
c. 110,
ss. 1—3.

WHEREAS the means of communication by electric telegraphs within the United Kingdom of Great Britain and Ireland are insufficient, and many important districts are without any such means of communication :

And whereas it would be attended with great advantage to the State, as well as to merchants and traders, and to the public generally, if a cheaper, more widely extended, and more expeditious system of telegraphy were established in the United Kingdom of Great Britain and Ireland, and to that end it is expedient that her Majesty's Postmaster-General be empowered to work telegraphs in connection with the administration of the Post Office :

May it therefore please your Majesty that it may be enacted ; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as "The Telegraph Act, 1868."

Short title.

2. The Telegraph Act, 1863, shall be incorporated with this Act, except so far as the same, or any part thereof, may be expressly varied, altered, or be inconsistent with this Act ; and the term "the company," in the Telegraph Act, 1863, shall, in addition to the meaning assigned to it in that Act, mean the Postmaster-General.

Provisions of
26 & 27 Vict.
c. 112, incor-
porated.

3. Terms to which meanings are assigned by the Telegraph Act, 1863, have in this Act the same respective meanings ; and the word "land" in such last-mentioned Act shall, in addition to the meaning thereby assigned to it, include any term, estate, easement, interest, right, or privilege, in, over, or affecting land, and shall include the works, tubes, wires, posts, and other property purchased or acquired by the Postmaster-General.

Interpretation
of terms.

31 & 32 Vict.
c. 110,
ss. 4, 5.

In this Act :—

The term “the undertaking” shall mean the whole or any part of the electric and other telegraphs, wires, posts, pipes, tubes, and other works, instruments, materials, lands, tenements, hereditaments, and buildings, parliamentary, prescriptive, and other rights, powers, privileges, patents, and all other property whatsoever of any company, corporation, or persons engaged in the United Kingdom of Great Britain and Ireland in transmitting messages for money or other consideration by means of electric or other telegraphs :

The term “any company” shall mean any company, corporation, or persons now engaged in the United Kingdom of Great Britain and Ireland in transmitting, or authorised to transmit, messages for money or other consideration, by means of electric or other telegraphs, or mechanical agencies, and each and every of those companies.

Purchase.

Power to
Postmaster-
General to
purchase
undertakings
of telegraph
companies.

4. It shall be lawful for her Majesty's Postmaster-General and he is hereby authorised, with the consent of the Lords Commissioners of her Majesty's Treasury, from time to time, out of any monies which may be from time to time appropriated by Act of Parliament and put at his disposal for that purpose, to purchase for the purposes of this Act, the whole, or such parts as he shall think fit, of the undertaking of any company, and any undertaking, and all other property purchased under the powers of this Act, shall be vested in and held by her Majesty's Postmaster-General, in his corporate capacity, and his successors: Provided always, that no such purchase be made, and that no agreement other than the agreements confirmed by this Act for any such purchase be binding, unless the said agreement, accompanied by a minute from the Commissioners of her Majesty's Treasury, in which the grounds of the agreement shall be set forth, shall have lain for one month on the table of both Houses of Parliament without disapproval.

Sale.

Power to tele-
graph com-
panies to sell
their under-
takings to the
Postmaster-
General.

5. Any company, with the authority of two-thirds of the votes of their shareholders present in person or by proxy at a general meeting of the company specially convened for the purpose, may sell all or any portion of their undertaking to the Postmaster-General for such sum of money as may be mutually agreed upon between the Postmaster-General and the company; and the execution by any company under their common seal of a conveyance to the Postmaster-General, duly stamped, of their undertaking, shall be sufficient to vest the same in the Postmaster-General for all the estate, right, title, and interest of the company therein, with all incidental rights, privileges, and easements, and the same may be used, exercised, and enjoyed by the Postmaster-General in the

same manner and to the same extent as the same respectively are, or if this Act had not been passed might be held, used, exercised and enjoyed by any company, and the receipt of two of the directors of any company for the purchase-money, endorsed upon the deed of conveyance, shall be a sufficient discharge for the same to the Postmaster-General, who shall not be bound to see to the distribution thereof.

31 & 32 Vict.
c. 110,
ss. 8—9.

6. All Acts, charters, and grants, and all valid deeds and agreements made to, from, by, or with any company whose undertaking shall be sold and conveyed to the Postmaster-General under the powers of this Act shall (except as far as they are by this Act expressed to be varied or repealed, or are inconsistent with the provisions of this Act,) remain in full force, and all matters to be done, continued, or completed, or which, but for the passing of this Act, would, might, or could be done, continued, or completed by or against the company so selling their undertaking, their officers or servants, shall or may (as the case requires) be done, continued, or completed by or against the Postmaster-General, his officers and servants, and those acts, charters, grants, deeds, and agreements shall be construed as if the Postmaster-General had been named therein instead of the company so selling their undertaking; and it shall be lawful for any person to enforce any such Act, charter, grant, deed, or agreement by action, suit, or other legal proceeding against the Postmaster-General in the same court, and in the same manner, and with the same rights and liabilities to pay costs and otherwise, as if this Act had not been passed.

Acts, &c. of companies selling their undertakings to remain in force, and the powers thereof to be exercised by the Postmaster-General.

7. If the Postmaster-General shall acquire any one undertaking under the powers of this Act he shall, upon the request, in writing, of any company possessing an undertaking established by special Act of Parliament or royal charter at the time of the passing of this Act, purchase the undertaking of such company, upon terms to be settled (failing agreement) by arbitration, provided such request be made within twelve calendar months after the Postmaster-General shall have so acquired any one undertaking; and any railway company possessed of a telegraph open to the use of the public on the first of January, one thousand eight hundred and sixty-eight for transmitting messages for money, or possessing any beneficial interest in such telegraph, shall be included in this provision, and any such railway company shall be entitled upon a like request, in writing, to require the Postmaster-General to purchase the right of such railway company to transmit such messages or other beneficial interest.

Companies may require Postmaster-General to purchase their undertaking under certain circumstances.

Provided always, that nothing in this Act shall enable the Postmaster-General to purchase the undertakings of the Atlantic Telegraph Company or of the Anglo-American Telegraph Company (Limited), or any part of such undertakings.

[8. *Relates to the purchase of the undertakings of the Electric and*

31 & 32 Vict.
c. 110, s. 9.

International Telegraph Company, the British and Irish Magnetic Telegraph Company, and the United Kingdom Electric Telegraph Company (Limited).]

Postmaster-General to enter into contracts with certain railway companies.

9. Whereas the railway companies in the United Kingdom are for the most part either themselves owners of telegraphs which are used for the conveyance of public messages, and which are also essential for the safe conduct of the traffic on their respective undertakings, or they have contracts for various terms of years with telegraph companies, whose telegraphic apparatus is placed in the stations and along the railways and canals of the railway companies, by which contracts provision is made with respect to the matters aforesaid: And whereas with certain railway companies agreements have been entered into by the Postmaster-General (subject to the approbation of Parliament), which agreements are referred to in schedules to this Act, and it is expedient that with respect to certain other railway companies, namely, the London and North-Western, the Midland, the Lancashire and Yorkshire, the Great Northern, the Manchester, Sheffield, and Lincolnshire, the North Staffordshire, the Great Eastern, the London, Brighton, and South Coast, the Metropolitan, the Metropolitan District, the Metropolitan and St. John's Wood, the Highland, the Sutherland, the Leven and East of Fife, the Glasgow and South-Western, and the Great North of Scotland, the provisions hereinafter contained be made as to the undertakings belonging separately to the said companies or held by them jointly with any other company, or held by them respectively on lease: Be it therefore enacted as follows:—

- (1.) The Postmaster-General shall give to each railway company three months' notice before he acquires the undertakings of any of the telegraphic companies with which the railway company has agreements; and on the expiration of such notice such agreements shall cease and determine:
- (2.) On such acquisition as aforesaid all the posts, wires, instruments, and other telegraphic apparatus belonging to the railway company, and also all posts, wires, instruments, and other telegraphic apparatus belonging to the telegraph companies on the railway company's lines and canals which are necessary for establishing a complete system of telegraphy in connexion with the working of trains and the traffic of the lines and canals, shall become the absolute property of the railway company, and shall be handed over to them by the Postmaster-General free of charge in efficient working order, so that the railway company may be in a position at once to take up and carry on their own telegraph work on their own system, and thereafter the said posts, wires, instruments, and other telegraphic apparatus shall be maintained and worked by the railway company:
- (3.) On such acquisition as aforesaid the Postmaster-General shall be entitled to use from telegraph stations not on

the lines of railway all the wires belonging to the respective telegraph companies on the line, and employed exclusively in the transmission of the public telegraph business, which are erected on the poles to be handed over to the railway company under paragraph (2); and he, at his cost, shall also be entitled to call upon the railway company to erect and maintain additional wires on the said poles, provided they are sufficiently strong and high for the purpose: and also to erect new poles at places to be agreed upon with wires over any of the lines and canals of the company, but so that such new poles shall not interfere in any way with the convenience or working of the railway or canals of the company, or obstruct the working of the traffic thereon. The railway company shall maintain all the posts and wires used for public messages, the Postmaster-General paying for the same as may be agreed or settled by arbitration:

- (4.) The Postmaster-General may require the railway company to affix wires to existing posts (if they can bear them), and the company may have a like power to affix wires to the posts belonging from time to time to the Postmaster-General, if sufficient for the purpose, and the cost of maintenance of such posts shall be divided between the Postmaster-General and the company, in proportion to the number of wires belonging to each on each post:
- (5.) The railway company may shift the poles, wires, and apparatus belonging to the Postmaster-General when necessary for the purposes of their works or traffic; but in all such cases the Postmaster-General shall pay to the railway company the actual costs incurred in shifting such poles and apparatus; but if such poles support the wires of the railway company and of the Postmaster-General, the cost of shifting the same shall be apportioned according to the number of wires belonging to or respectively used by the railway company and the Postmaster-General:
- (6.) The Postmaster-General shall pay the railway company the following sums by way of compensation:
 - a. Twenty years' purchase of the amount of the net annual receipts (if any) of public telegraph messages received and forwarded by the railway company on their own account, reckoned on the basis of the receipts derived therefrom over a continuous period of twelve months prior to the thirtieth day of June, one thousand eight hundred and sixty-eight:
 - b. Twenty times the amount of the estimated annual increase, calculated upon the average increase of the preceding three years of the said receipts from telegraphic messages, or where the business has been commenced within three years calculated upon the increase during

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c. 110, s. 9.

such shorter period, such annual amount in case of difference to be settled by arbitration :

c. All rents and annual or other payments payable to the railway company by public telegraph companies during the still unexpired periods embraced in their respective agreements, and at the terms mentioned in said agreements respectively :

d. Such sums as shall be agreed upon, or in default of agreement as shall be settled by arbitration, in respect of the loss by the railway company of the privilege of granting other wayleaves and making future arrangements with telegraph or other companies, and in respect of granting a monopoly to the Postmaster-General for the conveyance of telegraphs over their railways as herein provided for :

e. Such sums as shall be agreed upon, or in default of agreement as shall be settled by arbitration, as the value of the railway company's reversionary interest (if any) in the telegraph receipts from public messages on the expiration of the agreements with the respective telegraph companies :

f. Such sums as shall be agreed upon, or in default of agreement as shall be settled by arbitration, for the loss occasioned by removal of any clerks now provided by the telegraph company, and for any extra cost which the railway company may incur in working their telegraph for railway purposes as a separate system :

g. The Postmaster-General shall transmit to their respective destinations all messages of the railway company in any way relating to the business of the company to and from any "foreign stations" in the United Kingdom free of charge :

h. On such acquisition as aforesaid the Postmaster-General shall, as herein provided, have a perpetual right of way for his poles and wires over the whole of the railway company's system, and in consideration thereof he shall pay to the railway company such sum per mile per wire over the whole of the said system, by way of yearly rent, as shall be determined by agreement between the parties, or failing agreement, as shall be fixed by arbitration :

The arbitrator, in determining the amounts to be paid to the railway company under this Act, shall have regard to the agreements which subsist between the railway company and any telegraph company, and also to a compulsory sale being required from the railway company ; and in estimating the amount to be paid under any one part of this section shall have regard to the advantages to be obtained and the disadvantages to be sustained by the railway company under any other part of this section :

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c. 110, s. 9.

- (7.) The railway company shall, if required by the Postmaster-General so to do, from time to time, at such times and under such regulations as shall be agreed upon, receive messages for transmission by the public or private telegraph wires (but if the latter, the railway messages to have priority), and shall at the Postmaster-General's sole risk and expense transmit the same either to their place of destination, if upon the company's lines, or to some convenient post office as shall be arranged, and in respect of such receipt and transmission the company shall act as agents of the Postmaster-General, and shall receive in respect thereof such remuneration as shall be agreed upon, or in case of difference as shall be from time to time settled by arbitration. The Postmaster-General to provide the necessary instruments at the railway company's stations for the public wires, such instruments to be maintained by the railway company at the expense of the Postmaster-General :
- (8.) The railway company may, notwithstanding anything in this Act contained, and without payment to the Postmaster-General, from time to time make arrangements with coalmasters, ironmasters, and traders generally upon the company's system for the erection and working of private telegraphs between coalpits, ironworks, factories, warehouses, and offices in connexion with the stations of the company, or over their line ; but such telegraphs shall be used for the transaction of private business only, and no money payment shall be made or received in respect thereof except by way of annual rent or payment for wayleave and other accommodation :
- (9.) Except as aforesaid, the railway company shall not transmit or permit the transmission of any telegraphic message through their wires :
- (10.) All matters of difference between the Postmaster-General and railway companies arising under this Act shall be settled by arbitration, in conformity with the enactments of "The Railway Companies Arbitration Act, 1859," with respect to the settlement of disputes by arbitration ; and the provisions of that Act with respect to arbitration shall for these purposes be incorporated with this Act :
- (11.) Notwithstanding anything specified in this Act or in any agreement by this Act confirmed, the umpire to be appointed in any arbitration between the Postmaster-General and any railway company shall, in default of appointment by the arbitrators, be nominated by the Chief Justice of Her Majesty's Court of Common Pleas at Westminster for the time being.

THE REGULATION OF RAILWAYS ACT, 1868.

31 & 32 VICT. c. 119.

31 & 32 Vict.
c. 119,
ss. 1—3.

An Act to Amend the Law relating to Railways.

[31st July, 1868.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title. **1.** This Act may be cited as "The Regulation of Railways Act, 1868."

Interpretation
of terms. **2.** In this Act—

The term "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise:

The term "company" means a company incorporated, either before or after the passing of this Act, for the purpose of constructing, maintaining, or working a railway in the United Kingdom (either alone or in conjunction with any other purpose), and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom, or parties to an agreement for working a railway in the United Kingdom:

The term "person" includes a body corporate.

I.—Accounts, Audit, &c.

Uniform ac-
counts, &c. to
be kept. **3.** Every incorporated company, seven days at least before each ordinary half-yearly meeting held after the thirty-first day of December, one thousand eight hundred and sixty-eight, shall prepare and print, according to the forms contained in the first schedule to this Act, a statement of accounts and balance sheet for the last preceding half-year, and the other statements and certifi-

ates required by the same schedule, and an estimate of the proposed expenditure out of capital for the next ensuing half year, and such statement of accounts and balance sheet shall be the statement of accounts and balance sheet which are submitted to the auditors of the company. Every company which makes default in complying with this section shall be liable to a penalty not exceeding five pounds for every day during which such default continues. The Board of Trade, with the consent of a company, may alter the said forms as regards such company for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of this section.

31 & 32 Vict.
c. 119,
ss. 4—8.

4. Every statement of accounts, balance sheet, and estimate of expenditure, prepared as required by this Act, shall be signed by the chairman or deputy chairman of the directors and by the accountant or other officer in charge of the accounts of the company, and shall be preserved at the company's principal office. A printed copy thereof shall be forwarded to the Board of Trade, and at all times after the date at which it is required to be printed be given, on application, to every person who holds any ordinary or preference share or stock in the company, or any mortgage, debenture, or debenture stock of the company; and every such person may, at all reasonable times, without fee or charge, peruse the original in the possession of the company. Any company which acts in contravention of this section shall be liable for each offence to a penalty not exceeding fifty pounds.

Accounts, &c.,
to be signed,
and printed
copies dis-
tributed.

5. If any statement, balance sheet, estimate, or report which is required by this Act is false in any particular to the knowledge of any person who signs the same, such person shall be liable, on conviction thereof on indictment, to fine and imprisonment, or on summary conviction thereof, to a penalty not exceeding fifty pounds.

Penalty for
falsifying ac-
counts, &c.

6. The Board of Trade may appoint one or more competent inspectors to examine into the affairs of an incorporated company and the condition of its undertaking, or any part thereof, and to report thereon, upon any one of the applications following; that is to say,

Examination
of affairs by
inspectors.

1. Upon application made in pursuance of a resolution passed at a meeting of directors:
2. Upon application by the holders of not less than two-fifths part of the aggregate amount of the ordinary shares or stock of the company for the time being issued:
3. Upon application by the holders of not less than one-half of the aggregate amount of the mortgages, debentures, and debenture stock (if any) of the company for the time being issued:
4. Upon application by the holders of not less than two-fifths of the aggregate amount of the guaranteed or preference shares or stock of the company for the time being issued,

31 & 32 Vict.
c. 119,
ss. 7—10.

provided that the preference capital issued amounts to not less than one-third of the whole share capital of the company.

Application to
be supported
by evidence.

7. The application shall be made in writing, signed by the applicants, and shall be supported by such evidence as the Board of Trade may require, for the purpose of showing that the applicants have good reason for requiring such examination to be made; the Board of Trade may also, before appointing any inspector or inspectors, require the applicants to give security for payment of the costs of the inquiry.

Inspection of
company's
books and
property.

8. It shall be the duty of the directors, officers, and agents of the company to produce, for the examination of the inspectors, all books and documents relating to the affairs of the company in their custody or power, and to afford to the inspectors all reasonable facilities for the inspection of the property and undertaking of the company. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. Any person who, when so examined on oath, makes any false statement, knowing the same to be false, shall be guilty of perjury.

If any director, officer, or agent refuses to produce any book or document hereby directed to be produced, or to afford the facilities for inspection hereby required to be afforded, or if any officer or agent refuses to answer any question relating to the affairs of the company, he shall incur a penalty of five pounds for every day during which the refusal continues.

Result of ex-
amination,
how dealt
with.

9. Upon the conclusion of the examination the inspectors shall report their opinion to the Board of Trade and to the company, and the company shall print the same, and deliver a copy thereof to the Board of Trade, and, on application, to any person who holds any ordinary or preference share or stock, or any mortgage, debenture, or debenture stock of the company. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the persons upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same or any portion thereof to be paid by the company, which they are hereby authorised to do.

Power of
company to
appoint in-
spectors.

10. Any company may, by resolution at an extraordinary meeting, appoint inspectors for the purpose of examining into the affairs of the company and the condition of the company's undertaking. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, and shall make their report in such manner and to such persons as the company in general meeting directs; and the directors, officers, and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document by this Act required to be produced to such inspectors, or to

afford the facilities for inspection by this Act required to be afforded, or to answer any question, as they would have incurred if such inspectors had been appointed by the Board of Trade.

31 & 32 Vict.
c. 119,
ss. 11—13.

11. Whenever, after the passing of this Act, section one hundred and two of "The Companies Clauses Consolidation Act, 1845," is incorporated in a certificate or special Act relating to a railway company, it shall be construed as if the words, "where no qualification shall be prescribed by the special Act every auditor shall have at least one share in the undertaking," were omitted therefrom; and so much of every certificate and special Act relating to a railway company, and in force at the passing of this Act, as incorporates that portion of the said section, and so much of any special Act relating to a railway company, and so in force, as contains a like provision, is hereby repealed.

Auditor not necessarily a shareholder.

12. With respect to the auditors of the company the following provisions shall have effect:—

Auditors of company, and appointment of auditor by Board of Trade.

- (1.) The Board of Trade may, upon application made in pursuance of a resolution passed at a meeting of the directors or at a general meeting of the company, appoint an auditor in addition to the auditors of such company, and it shall not be necessary for any such auditor to be a shareholder in the company:
- (2.) The company shall pay to such auditor appointed by the Board of Trade such reasonable remuneration as the Board of Trade may prescribe:
- (3.) The auditor so appointed shall have the same duties and powers as the auditors of the company, and shall report to the company:
- (4.) Where, in consequence of such appointment of an auditor or otherwise, there are three or more auditors, the company may declare a dividend if the majority of such auditors certify in manner required by section thirty of "The Railway Companies Act, 1867," and "The Railway Companies (Scotland) Act, 1867," respectively:
- (5.) Where there is a difference of opinion among such auditors, the auditor who so differs shall issue to the shareholders, at the cost of the company, such statement respecting the grounds on which he differs from his colleagues, and respecting the financial condition and prospects of the company, as he thinks material for the information of the shareholders.

13. Any company which in the year immediately preceding has paid a dividend on their ordinary stock of not less than three pounds per centum per annum may, pursuant to the resolution of an extraordinary general meeting, divide their paid-up ordinary stock into two classes, to be and to be called the one preferred ordinary stock, and the other deferred ordinary stock, and issue

Issue of preferred and deferred ordinary stock.

31 & 32 Vict.
c. 119,
s. 13.

the same subject and according to the following provisions, and with the following consequences (that is to say) :

- (1.) Preferred and deferred ordinary stock shall be issued only in substitution for equal amounts of paid-up ordinary stock, and by way of division of portions of ordinary stock into two equal parts :
- (2.) Such division may be made at any time, on the request in writing of the holder of paid-up ordinary stock, but not otherwise ; and such request may apply to the whole of the ordinary stock of such holder, or to any portion thereof divisible into twentieth parts :
- (3.) Preferred ordinary stock and deferred ordinary stock shall not be issued except in sums of ten pounds or multiples of ten pounds :
- (4.) The certificates for any ordinary stock divided into preferred and deferred ordinary stock shall before such division be delivered up to the company, and shall be cancelled by them, and certificates for preferred ordinary stock and deferred ordinary stock shall be issued gratis in exchange by the company :
- (5.) If in any case there is any part of the ordinary stock held by a stockholder comprised in one certificate which he does not desire to be divided, or which is incapable of division, under the provisions of this Act, the company shall issue to him gratis a certificate for that amount as ordinary stock :
- (6.) As between preferred ordinary stock and deferred ordinary stock, preferred ordinary stock shall bear a fixed maximum dividend at the rate of six per centum per annum :
- (7.) In respect of dividend to the extent of the maximum aforesaid, preferred ordinary stock shall at the time of its creation, and at all times afterwards, have priority over deferred ordinary stock created or to be created, and shall rank *pari passu* with the undivided ordinary stock and the ordinary shares of the company created or to be created ; and in respect of dividend, preferred ordinary stock shall at all times and to all intents rank after all preference and guaranteed stock and shares of the company created or to be created :
- (8.) In each year after all holders of preferred ordinary stock for the time being issued have received in full the maximum dividend aforesaid, all holders of deferred ordinary stock for the time being issued shall, in respect of all dividend exceeding that maximum paid by the company in that year on ordinary stock and shares, rank *pari passu* with the holders of undivided ordinary stock and of ordinary shares of the company for the time being issued :
- (9.) If, nevertheless, in any year ending on the thirty-first day of December there are not profits available for payment to all the holders of preferred ordinary stock of the

- maximum dividend aforesaid, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company :
- (10.) Preferred ordinary stock and deferred ordinary stock from time to time shall confer such right of voting at meetings of the company, and shall confer and have all such other rights, qualifications, privileges, liabilities, and incidents, as from time to time attach and are incident to undivided ordinary stock of the company :
- (11.) The terms and conditions on which any preferred ordinary stock or deferred ordinary stock is issued shall be stated on the certificate thereof :
- (12.) Preferred ordinary stock and deferred ordinary stock shall respectively be held on the same trusts, and subject to the same charges and liabilities, as those on and subject to which the ordinary stock in substitution for which the same are issued was held immediately before the substitution, and so as to give effect to any testamentary or other disposition of or affecting such ordinary stock.

31 & 32 Vict.
c. 119,
ss. 14—16.

II.—*Obligations and Liability of Companies as Carriers.*

14. Where a company by through booking contracts to carry any animals, luggage, or goods from place to place partly by railway and partly by sea, or partly by canal and partly by sea, a condition exempting the company from liability for any loss or damage which may arise during the carriage of such animals, luggage, or goods, by sea, from the act of God, the king's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such animals, luggage, or goods, be valid as part of the contract between the consignor of such animals, luggage, or goods and the company in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition. For the purposes of this section, the word "company" includes the owners, lessees, or managers of any canal or other inland navigation.

Liability of
company
during sea
transit.

15. On and after the first day of January, one thousand eight hundred and sixty-nine, every company shall cause to be exhibited in a conspicuous place in the booking office of each station on their line, a list or lists painted, printed, or written in legible characters, containing the fares of passengers by the trains included in the time tables of the company from that station to every place for which passenger tickets are there issued.

Fares to be
posted in
stations.

16. Where a company is authorised to build, or buy, or hire

Provision for
securing equa-

31 & 32 Vict.
c. 119,
ss. 17, 18.

lity of treat-
ment where
railway com-
pany works
steam vessels.
[See Railways
Clauses Act,
1863, s. 30, and
Regulation of
Railways Act,
1873, s. 11.]

and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working, steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof, or in favour of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use, the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

The provisions of "The Railway and Canal Traffic Act, 1854," so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby.

The cases upon equality of treatment will be found in the notes to sect. 2 of the Railway and Canal Traffic Act, 1854, *ante*, pp. 405—409.

As to what will constitute an agreement for the use, maintenance and working of steam vessels, see *Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 227, at p. 233.

See as to what circumstances will justify a preference upon the part of a railway company of a line of steamers run in connection with its trains (*Southsea & Isle of Wight Steam Ferry Co. v. London & Brighton & London & S. W. Ry. Cos.*, 2 N. & Mac. 341; *City of Dublin Steam Packet Co. v. L. & N. W. Ry. Co.*, 4 B. & Mac. 10).

Company
bound to fur-
nish particu-
lars of charges
for goods.

[See Regula-
tion of Rail-
ways Act,
1873, s. 14.]

17. Where any charge shall have been made by a company in respect of the conveyance of goods over their railway, on application in writing within one week after payment of the said charge made to the secretary of the company by the person by whom or on whose account the same has been paid, the company shall within fourteen days render an account to the person so applying for the same, distinguishing how much of the said charge is for the conveyance of the said goods on the railway, including therein tolls for the use of the railway, for the use of carriages, and for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery, and for other expenses, but without particularising the several items of which the last-mentioned portion of the charge may consist.

Charge when
two railways
worked by one
company.

18. Where two railways are worked by one company, then in the calculation of tolls and charges for any distances in respect of traffic (whether passengers, animals, goods, carriages, or vehicles) conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

19. Where proceedings are taken against a company using a locomotive steam engine on a railway on account of the same not consuming its own smoke, then if it appears to the justices before whom the complaint is heard that the engine is constructed on the principle of consuming its own smoke, but that it failed to consume its own smoke, as far as practicable, at the time charged in the complaint through the default of the company, or of any servant in the employment of the company, such company shall be deemed guilty of an offence under "The Railways Clauses Consolidation Act, 1845," section one hundred and fourteen.

31 & 32 Vict.
c. 119,
ss. 19—23.

Proceedings
in case of non-
consumption
of smoke.

20. All railway companies, except the Metropolitan Railway Company, shall, from and after the 1st day of October next, in every passenger train where there are more carriages than one of each class, provide smoking compartments for each class of passengers, unless exempted by the Board of Trade.

Smoking com-
partments for
all classes.

21. Any railway company that shall knowingly let for hire or otherwise provide any special train for the purpose of conveying parties to or to be present at any prize fight, or who shall stop any ordinary train to convenience or accommodate any parties attending a prize fight at any place not an ordinary station on their line, shall be liable to a penalty, to be recovered in a summary way before two justices of the county in which such prize fight shall be held or shall be attempted to be held, of such sum not exceeding five hundred pounds, and not less than two hundred pounds, as such justices shall determine, one-half of such penalty to be paid to the party at whose suit the summons shall be issued, and the other half to be paid to the treasurer of the county in which such prize fight shall be held or shall be attempted to be held in aid of the county rate; and service of the summons under which the penalty is sought to be enforced on the secretary of the company at his office ten days before the day of hearing shall be sufficient to give the justices before whom the case shall come jurisdiction to hear and determine the case.

Railway
companies to
be liable to
penalties in
case they shall
provide trains
for prize
fights.

III.—*Provisions for Safety of Passengers.*

22. After the first day of April, one thousand eight hundred and sixty-nine every company shall provide, and maintain in good working order, in every train worked by it which carries passengers, and travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may approve. If any company makes default in complying with this section it shall be liable to a penalty not exceeding ten pounds for each case of default. Any passenger who makes use of the said means of communication without reasonable and sufficient cause shall be liable for each offence to a penalty not exceeding five pounds.

Communica-
tion between
passengers
and the com-
pany's ser-
vants.

A train is or is not within this section, according to the instructions as to stop-

31 & 32 Vict.
c. 119,
ss. 23—26.

Penalty for
trespasses on
railways.

* Once re-
ceived.
34 & 35 Vict.
c. 78, s. 14.

Trees danger-
ous to rail-
ways may be
removed.

ping given to the company's servants (*Blamires v. Lancashire & Yorkshire Ry. Co.*, 42 L. J. Ex. 182; L. R. 8 Ex. 283).

23. If any person shall be or pass upon any railway, except for the purpose of crossing the same at any authorised crossing, after having* received warning by the company which works such railway, or by any of their agents or servants, not to go or pass thereon, every person so offending shall forfeit and pay any sum not exceeding forty shillings for every such offence.

24. If any tree standing near to a railway shall be in danger of falling on the railway so as to obstruct the traffic, it shall be lawful for any two justices on the complaint of the company which works such railway to cause such tree to be removed or otherwise dealt with as such justices may order, and the justices making such order may award compensation to be paid by the company making such complaint to the owner of the tree so ordered to be removed or otherwise dealt with as such justices shall think proper, and the amount of such compensation shall be recoverable in like manner as compensation recoverable before justices under "The Railways Clauses Consolidation Act, 1845."

IV.—*Compensation for Accidents.*

Arbitration of
damages.

25. Where a person has been injured or killed by an accident on a railway, the Board of Trade, upon application in writing made jointly by the company from whom compensation is claimed and the person if he is injured, or his representatives if he is killed, may, if they think fit, appoint an arbitrator, who shall determine the compensation (if any) to be paid by the company.

Examination
by medical
man.

26. Whenever any person injured by an accident on a railway claims compensation on account of the injury, any judge of the court in which proceedings to recover such compensation are taken, or any person who by the consent of the parties or otherwise has power to fix the amount of compensation, may order that the person injured be examined by some duly qualified medical practitioner named in the order, and not being a witness on either side, and may make such order with respect to the costs of such examination as he may think fit.

Report is not
privileged.

It would seem that a report made in pursuance of an order under this section would not be privileged (see *Friend v. L. C. & D. Ry. Co.*, 2 Ex. D. 437).

Where an order not expressed to be made under this section directs a person to be examined by a doctor, the order is *ultra vires*, and the person must be taken to have been examined by consent (*Friend v. L. C. & D. Ry. Co.*, 2 Ex. D. 437).

Discovery is
matter of
right.

The right to discovery is now governed by the rules formerly in force in the Court of Chancery, and under Order XXXI. rule 11, a judge has no discretion to refuse discovery (*Anderson v. Bank of British Columbia*, 2 Ch. D. 644; *Bustros v. White*, 1 Q. B. D. 423).

Privileged
reports.

Reports relating to an accident made by servants of the company in the ordinary course of their duty, whether before or after action brought, are liable to inspection (*Woolley v. N. London Ry. Co.*, L. R. 4 C. P. 602. See *Anderson v. Bank of British Columbia*, 2 Ch. D. 644).

But the report of a medical man procured by the company for the purpose of being submitted to their solicitors after a claim for compensation has been made is

privileged (*Cossey v. L. B. & S. C. Ry. Co.*, L. R. 5 C. P. 146; *Fenner v. L. & S. E. Ry. Co.*, L. R. 7 Q. B. 767; *Skinner v. Gt. N. Ry. Co.*, L. R. 9 Ex. 298; *Friend v. L. C. & D. Ry. Co.*, 2 Ex. D. 437; *Pacey v. London Tramways Co.*, 2 Ex. D. 440).

31 & 32 Vict.
c. 119,
ss. 27—30.

Baker v. L. & S. W. Ry. Co., L. R. 3 Q. B. 91, may be supported, inasmuch as privilege was not claimed on the ground that the reports were procured with reference to impending litigation, but merely on the ground that they were confidential communications to the company by their agents in the course of their duty, which was clearly no sufficient ground of privilege (see *Cossey's case*, *supra*).

The fact that the report is not prepared at the request of the solicitor, or that it is not, in fact, submitted to him, is immaterial, provided it was procured with the intention of being laid before him for his advice (*Southwark & Vauxhall Water Co. v. Quick*, 3 Q. B. D. 315).

V.—Light Railways.

27. The Board of Trade may by licence authorise a company applying for it to construct and work or to work as a light railway the whole or any part of a railway which the company has power to construct or work.

Order for construction and working of railway as a light railway.

Before granting the licence the Board of Trade shall cause due notice of the application to be given, and shall consider all objections and representations received by them, and shall make such inquiry as they think necessary.

28. A light railway shall be constructed and worked subject to such conditions and regulations as the Board of Trade may from time to time impose or make: Provided, that (1.) the regulations respecting the weight of locomotive engines, carriages, and vehicles to be used on such railway shall not authorise a greater weight than eight tons to be brought upon the rails by any one pair of wheels; (2.) the regulations respecting the speed of trains shall not authorise a rate of speed exceeding at any time twenty-five miles an hour.

Conditions and regulations for light railway.

If the company or any person fails to comply with or acts in contravention of such conditions and regulations or directs any one so to fail or act, such company and person shall respectively be liable to a penalty for each offence not exceeding twenty pounds, and to a like penalty for every day during which the offence continues; and every such person on conviction on indictment for any offence relating to the weight of engines, carriages, or vehicles, or the speed of trains, shall be also liable to imprisonment, with or without hard labour, for any term not exceeding two years.

29. The conditions and regulations of the Board of Trade relating to light railways shall be published and kept published by the company in manner directed with respect to byelaws by section one hundred and ten of "The Railways Clauses Consolidation Act, 1845," and the company shall be liable to a penalty not exceeding five pounds for every day during which such conditions and regulations are not so published.

Publication of regulations.

VI.—Arbitrations by Board of Trade.

30. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company

Arbitrator appointed by Board of Trade.

31 & 33 Vict.
c. 119,
ss. 31—36.

is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade.

If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

**Remuneration
of arbitrator.**

31. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them, and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade.

**Costs, &c. of
arbitrations.**

32. The provisions of sections eighteen to twenty-nine, both inclusive, of "The Railway Companies Arbitration Act, 1859," shall, so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this Act the word "companies" shall be construed to mean the parties to the arbitration.

[**33.** *Repealed by 32 & 33 Vict. c. 18, s. 2.*]

VII.—*Miscellaneous.*

**Printed copies
of share-
holders ad-
dress book.**

34. Every incorporated company shall print correct copies of the shareholders address book of the company corrected up to the first day of December in every year, and affix an asterisk against the names of those qualified to act as directors.

After the expiration of one fortnight from the aforesaid date the company shall, on application, supply such printed copies at a price not exceeding five shillings for each copy to every person who holds any ordinary or preference shares or stock in the company, or any mortgage debenture or debenture stock of the company.

Any company which acts in contravention of this section shall be liable for each offence to a penalty not exceeding twenty pounds.

[**35** *is repealed by 32 & 33 Vict. c. 6, s. 1.*]

**Special trains
exclusively for
post office.**

36. Whenever in pursuance of any notice under the Act of the session of the first and second years of the reign of her present Majesty, chapter ninety-eight, "to provide for the conveyance of mails by railways," or otherwise, the mails or post-letter bags are conveyed and forwarded by a company on their railway by a special train, the Postmaster-General may by the same or any

other notice in writing require that the whole of such special train shall be appropriated to the service of the post-office exclusively of all other traffic except such as he may sanction, and the remuneration to be paid for such service shall be settled as prescribed by the sixth section of that Act.

31 & 32 Vict.
c. 119,
ss. 37-40.

Any dispute as to the amount of remuneration may, at the option of the railway company, be decided by the Railway Commissioners (see 36 & 37 Vict. c. 48, s. 19).

37. All requisitions, notices, and documents which relate to a company, if purporting to be signed by the Postmaster-General or some secretary or assistant secretary to the post-office, or by some officer appointed for the purpose by the Postmaster-General, shall, until the contrary is proved, be deemed to have been so signed, and to have been given or made by the Postmaster-General, and the provisions of the Act of the session of the first and second years of the reign of her present Majesty, chapter ninety-eight, "to provide for the conveyance of mails by railways," requiring any notice, requisition, or document to be under the hand of the Postmaster-General, are hereby repealed.

Service of
requisitions,
&c., by Post-
master-
General.

38. The Railway Companies Powers Act, 1864, shall take effect and apply in the following cases in the same manner as if they were specified in section three of that Act; (that is to say),

Extension of
scope of Rail-
way Com-
panies Powers
Act, 1864.

Where a company desire to make new provisions, or to alter any of the provisions of their special Act, or of "The Companies Clauses Consolidation Act, 1845," so far as it is incorporated therewith, with respect to all or any of the matters following: namely,

- (a) The general meetings of the company, and the exercise of the right of voting by the shareholders:
- (b) The appointment, number, and rotation of directors:
- (c) The powers of directors:
- (d) The proceedings and liabilities of directors:
- (e) The appointment and duties of auditors.

39. All requisitions, orders, regulations, appointments, certificates, licences, notices, and documents which relate to a company, if purporting to be signed by some secretary or assistant secretary of or by some officer appointed for the purpose by the Board of Trade, shall, until the contrary is proved, be deemed to have been so signed, and to have been given or made by the Board of Trade. They may be served by the Board of Trade on any company in the manner in which notices may be served under the Companies Clauses Consolidation Act, 1845; and all notices, returns, and other documents required to be made, delivered, or sent by a company to the Board of Trade shall be left at the office of, or transmitted through the post addressed to, the Board of Trade.

Service of re-
quisitions, &c.

40. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Con-

Recovery, &c.
of penalties.

31 & 32 Vict.
c. 119,
ss. 41—43.

solidation (Scotland) Act, 1845 (as the case may require), are for the time being recoverable and applicable.

Company may
apply to
Common Law
Judge at
Westminster
to hear cases
of compensa-
tion under
8 & 9 Vict. c.
18.

41. Whenever, in the case of any lands purchased or taken otherwise than by agreement for the purposes of any public railway, any question of compensation in respect thereof, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is under the provisions of "The Lands Clauses Consolidation Act, 1845," to be settled by the verdict of a jury empanelled and summoned as in that Act mentioned, the company or the party entitled to the compensation may, at any time before the issuing by the company (a) to the sheriff as by that Act directed, apply to a judge of any one of the Superior Courts of Common Law at Westminster, who shall, if he think fit, make an order for trial of the question in one of the Superior Courts upon such terms and in such manner as to him shall seem fit; and the question between the parties shall be stated in an issue to be settled in case of difference by the judge, or as he shall direct, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action at such place as the judge shall direct; and the proceedings in respect of such issue shall be under and subject to the control and jurisdiction of the court as in ordinary actions therein, but so nevertheless that the jury shall, where the issue relates to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to lands held therewith, deliver their verdict separately in manner provided by the forty-ninth section of "The Lands Clauses Consolidation Act, 1845."

(a) The words "of a warrant" are omitted.

A summons not returnable until after the expiration of the twenty-one days given by sect. 68 would it seems be bad (*Tanner v. Swindon, &c. Ry. Co.*, 45 L. T. 209).

In an issue under this section, the time for appealing is not limited to twenty-one days by O. LVIII. rules 9 and 15 (*New River Co. v. Midland Ry. Co.*, 36 L. T. N. S. 539).

Company may
obtain judge's
order instead
of issuing
warrant.

42. Whenever a company is called upon or liable under the provisions of the Lands Clauses Consolidation Act, 1845, to issue their warrant to the sheriff in the case of any disputed compensation, and the company shall obtain a judge's order as in the last preceding section mentioned, the obtaining of such an order and notice thereof to the opposite party shall be a satisfaction of the company's duty in respect of the issue of the warrant.

Power of ver-
dict of jury
and judgment
of the Court.

43. The verdict of the jury and judgment of the court upon any issue authorised by this Act shall, as regards costs and every other matter incident to or consequent thereon, have the same operation and be entitled to the same effect as if that verdict and judgment had been the verdict of a jury and judgment of a sheriff upon an inquiry conducted upon a warrant to the sheriff issued by the company under the Lands Clauses Consolidation Act, 1845.

44. In so far as any expression used in any of the three preceding sections of this Act has any special meaning assigned to it by the Lands Clauses Consolidation Act, 1845, each such expression shall in this Act have the meaning so assigned to it.

31 & 32 Vict.
c. 119,
ss. 44—47.

Interpretation
of certain ex-
pressions.

45. Wherever under the provisions of the Lands Clauses Consolidation Act, 1845, or of any Act incorporating, altering, or amending the same, the costs of any proceedings for determining a question of disputed compensation are settled by one of the masters of the Court of Queen's Bench in England or Ireland, it shall be lawful for such masters to receive and take in respect of each folio in length of every bill of costs so settled a fee of one shilling and no more: and such fee shall be taken in money and not in stamps, and may be retained by the said masters for their own use and benefit.

Fees to
masters for
determining
questions of
disputed com-
pensation.

46. Where notice in writing of a proposed application under the Railways (Extension of Time) Act, 1868, for extension of the time limited for any of the purposes mentioned in that Act, is received by the Board of Trade before the expiration of such time, or if the time has expired during the present session of Parliament before the first day of September one thousand eight hundred and sixty-eight, and the application is duly made within the period prescribed by the said Act, then a warrant of the Board of Trade extending the time, although issued after the expiration thereof, shall have effect from the date of such expiration as if it had been previously issued.

Extension of
time.

47. The enactments described in the second schedule to this Act are hereby repealed.

As to repeal of
enactments
in second
schedule.

But this repeal shall not affect—

- (1.) The validity or invalidity of anything duly done or suffered under any enactment repealed by this section:
- (2.) Any right acquired or accrued or liability incurred, or any remedy in respect thereof.

SCHEDULES.

FIRST SCHEDULE.

31 & 32 Vict.
c. 119.
Schedule I.

FORMS OF ACCOUNT referred to in Sect. 3 of this Act.

RAILWAY. HALF-YEAR ENDING , 18 .

[No. 1.]

STATEMENT OF CAPITAL AUTHORIZED, AND CREATED BY THE COMPANY.

ACTS OF PARLIAMENT, or Certificates of the Board of Trade.	CAPITAL AUTHORIZED.			CAPITAL CREATED OR SANCTIONED.			BALANCE.		
	Stock and Shares.	Loans.	Total.	Stock and Shares.	Loans.	Total.	Stock and Shares.	Loans.	Total.
	£	£	£	£	£	£	£	£	£
1. } <i>[Except where capital powers</i> 2. } <i>are comprised in a Consoli-</i> 3. } <i>dation Act, each Act or</i> 4. } <i>certificate authorising</i> 5. } <i>capital to be stated here</i> } <i>separately in order of</i> } <i>date.]</i> &c.]									
TOTAL.....									

[No. 2.]

STATEMENT OF STOCK AND SHARE CAPITAL CREATED, SHOWING THE PROPORTION
RECEIVED.

DESCRIPTION.	Amount created.	Amount received.	Calls in arrear.	Amount uncalled.	Amount unissued.
	£	£	£	£	£
<i>[State each class of stock or shares in order of date of creation, showing the premium or discount, if any, at which it was issued, the preferential or fixed dividends, if any, to which it is en- titled, and any other conditions at- tached to it.]</i>					
TOTAL.....					

[No. 3.]
CAPITAL RAISED BY LOANS AND DEBENTURE STOCK.

	RAISED BY LOANS.								RAISED BY ISSUE OF DEBENTURE STOCKS.		Total raised by Loans and by Debenture Stocks.
	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	At per Cent.	Total Debenture Stocks.	£ s. d.
Existing at	£	£	£	£	£	£	£	£	£	£	
Ditto at											
Increase											
Decrease											
Total amount authorised to be raised by Loans and by Debenture Stocks in respect of Capital created, as per Statement No. 1											
Total amount raised by Loans and by Debenture Stock as above											
Balance being available Borrowing Powers at											186

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Schedule I.

The Regulation of Railways Act, 1868.

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c. 119.
Schedule I.**

[No. 4.]

Dr.				RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT.				Cr.			
			Amount Ex- pended to	Amount Ex- pended during Half Year.	Total.				Amount Re- ceived to	Amount Re- ceived during Half Year.	Total.
			£ s. d.	£ s. d.	£ s. d.				£ s. d.	£ s. d.	£ s. d.
To Expenditure—						By Receipts—					
On Lines open for Traffic (No. 5) ..						Shares and Stock, per Account No.					
On Lines in course of construction (No. 5)						2					
Working Stock (No. 5)						Loans, per Ac- count No. 3 ..					
Subscriptions to other Railways (No. 5)						Debenture Stock, per Account No.					
Docks, Steam- boats and other special Items (No. 5)						3					
						Sundries (in de- tail)					
, Balance											

[No. 5.]

DETAILS OF CAPITAL EXPENDITURE FOR HALF YEAR ENDING

186

Lines open for Traffic— Particulars—	} [Showing, under separate Heads, Amount paid for Land (Purchase and Compensation), Construction of Way and Stations, including Rails, Chairs, Sleepers, &c., engineering and surveying, Law Charges, Parliamentary Expenses, Interest, Commission, &c.]	
Lines in course of Construction— Particulars—		
Working Stock— Particulars—	Showing each Description of Stock	
Subscriptions to other Railways— Particulars—	Stating Lines	
Docks, Steamboats, and other special Items— Particulars		
TOTAL Expenditure for Half Year, as per Account No. 4		

[No. 6.]
RETURN OF WORKING STOCK.

31 & 32 Vict.
c. 119.
Schedule I.

	LOCO-MOTIVE.		COACHING.					MERCHANDISE AND MINERAL.				
	Engines.	Tenders.	First Class.	Second Class.	Third Class.			Goods Waggon.	Goods Waggon covered.	Coke Trucks.	Cattle Trucks.	Timber Trucks.
Stock on the 18												
Ditto on the 18												
Increase during the Half Year.....												
Decrease during the Half Year.....												

[No. 7.]
ESTIMATE OF FURTHER EXPENDITURE ON CAPITAL ACCOUNT.

	FURTHER EXPENDITURE.		
	During the Half Year ending	In subsequent Half Years.	Total.
Lines open for Traffic			
(Particulars, showing principal Items.)			
Lines in course of construction			
(Details of each Line.)			
Working Stock			
(Particulars.)			
Subscription to other Railways			
(Specifying Lines.)			
Docks, Steamboats, and other special Items ..			
(Particulars.)			
Works not yet commenced and in abeyance (in detail)			
Other Items (in detail)			
Total estimated further Expenditure of Capital			

[No. 8.]
CAPITAL POWERS and other ASSETS available to meet further EXPENDITURE, as per No. 7.

Share and Loan Capital authorised or created but not yet received		
Any other Assets (in detail)		
Total		

The Regulation of Railways Act, 1868.

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c. 119.
Schedule I.

[No. 9.]

Dr.

REVENUE ACCOUNT.

Cr.

Half Year ended	EXPENDITURE.	£ s. d.	Half Year ended	RECEIPTS.	£ s. d.	£ s. d.
	To Maintenance of Way, Works and Stations } see Abstract A.			By Passengers		
	„ Locomotive Power .. } do. B.			„ Parcels, Horses, Carriages, &c.		
	„ Carriage and Wagon Repairs } do. C.			„ Mails		
	„ Traffic Expenses .. } do. D.			„ Merchandise		
	„ General charges .. } do. E.			„ Live Stock		
	„ Law Charges			„ Minerals		
	„ Parliamentary Expenses			„ Special and Miscellaneous Receipts ..		
	„ Compensation (Accidents and Losses) ..			<i>Such as Navigations, Steamboats, Rents, Transfer Fees, &c.</i>		
	„ Rates and Taxes			<i>Details.</i>		
	„ Government Duty ..					
	„ Special and Miscellaneous Expenses (if any)					
	„ Balance carried to Net Revenue Account ..					
	£				£	

[No. 10.]

Dr.

NET REVENUE ACCOUNT.

Cr.

Half Year ended		£ s. d.	Half Year ended		£ s. d.
	To Interest on Mortgage and Debenture Loans			By Balance brought from last Half Year's Account	
	„ Interest on Debenture Stock			„ Ditto Revenue Account, No. 9	
	„ Interest on Calls in Advance			„ Dividends on Shares in other Companies	
	„ Interest on Temporary Loans			„ Bankers and General Interest Account (if in credit)	
	„ Interest on Lloyd's Bonds			„ Special and Miscellaneous Receipts (if any)	
	„ Interest on Banking Balances			<i>(Detail to be given.)</i>	
	„ General Interest Account (if in Debit)				
	„ Rents of Leased Lines, Guarantees, &c.				
	<i>Details</i>				
	„ Special and Miscellaneous Payments (if any)				
	<i>Details.</i>				
	„ Balance, being Payment available for Dividend [See No. 13.]				
	£				£

The Regulations of Railways Act, 1868.

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[No. 11.]

PROPOSED APPROPRIATION OF BALANCE AVAILABLE FOR DIVIDEND.

Half Year ended	Balance available for Dividend, as per Account No. 10£ Preference Stock { to be stated in order of } £ Ditto { Creation, with Rate of } Ditto { Dividend. } Ordinary Stock (being at the Rate of per cent.)
	Balance to next Half Year.....£

31 & 32 Vict.
c. 119.
Schedule I.

[No. 12.]

ABSTRACT.

A. MAINTENANCE OF WAY, WORKS, &c.				C.—REPAIRS AND RENEWALS OF CARRIAGES AND WAGGONS.			
Half Year ended		£ s. d.	£ s. d.	Half Year ended		£ s. d.	£ s. d.
	Salaries, Office Expenses, and General Superintendence.....				CARRIAGES:—		
	Maintenance and Renewal of Permanent Way				Salaries, Office Expenses, and General Superintendence		
	Wages.....				Wages.....		
	Materials				Materials		
	Repairs of Roads, Bridges, Signals and Works				WAGGONS:—		
	Repairs of Stations and Buildings				Salaries, Office Expenses, and General Superintendence		
	Special Expenditure (if any).....				Wages.....		
	MILES MAINTAINED..				Materials		
	Double						
	Single				Total....		
	Total						
	Total....						
B. LOCOMOTIVE POWER.				D. TRAFFIC EXPENSES.			
Half Year ended		£ s. d.	£ s. d.	Half Year ended		£ s. d.	
	Salaries, Office Expenses, and General Superintendence.....				Salaries and Wages, &c.....		
	RUNNING EXPENSES:—				Fuel, Lighting, Water, and General Stores		
	Wages connected with the working of Locomotive Engines..				Clothing		
	Coal and Coke				Printing, Stationery, and Tickets		
	Water				Horses, Harness, Vans, Provender, &c.		
	Oil, Tallow, and other Stores				Waggon Covers, Ropes, &c.		
	REPAIRS AND RENEWALS—				Joint Station Expenses		
	Wages.....				Miscellaneous Expenses		
	Materials				Special Expenditure (if any)....		
	Special Expenditure						
	£						
				E. GENERAL CHARGES.			
Half Year ended		£ s. d.	£ s. d.	Half Year ended		£ s. d.	
					Directors.....		
					Auditors and Public Accountants (if any)		
					Salaries of Secretary, General Manager, Accountant, and Clerks		
					Office Expenses ditto ditto		
					Advertising		
					Fire Insurance		
					Electric Telegraph Expenses....		
					Railway Clearing House Expenses		
					Special Expenditure (if any)....		

The Regulation of Railways Act, 1868.

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c. 119.
Schedule I.

[No. 13.]

Dr.

GENERAL BALANCE SHEET.

Cr.

	£ s. d.		£ s. d.
To Capital Account, Balance at Credit thereof, as per Account No. 4		By Cash at Bankers—Current Account	
„ Net Revenue Account, Balance at Credit thereof, as per Account No. 10		„ Cash on Deposit at Interest	
„ Unpaid Dividends and Interest		„ Cash invested in Consols and Government Securities ..	
„ Guaranteed Dividends and Interest payable or accruing and provided for		„ Cash invested in Shares of other Railway Companies not charged as Capital Expenditure	
„ Temporary Loans		„ General Stores—Stock of Materials on hand	
„ Lloyd's Bonds and other obligations not included in Loan Capital Statement, No. 3		„ Traffic Accounts due to the Company.....	
„ Balance due to Bankers.....		„ Amounts due by other Companies	
„ Debts due to other Companies		„ Amounts due by Clearing House	
„ Amount due to Clearing House		„ Amounts due by Post Office	
„ Sundry Outstanding Accounts ..		„ Sundry Outstanding Accounts ..	
„ Fire Insurance Fund on Stations, Works, and Buildings..		„ Suspense Accounts (if any) to be enumerated	
„ Insurance Fund on Steamboats ..		Special Items	
„ Special Items			
£		£	

[No. 14.]

MILEAGE STATEMENT.

Half Year ended .		Miles authorised.	Miles constructed.	Miles constructing or to be constructed.	Miles worked by Engines.
	Lines owned by Company				
	Do. partly owned				
	Do. leased or rented				
	Total				
	Do. worked				
	Foreign lines worked over				
	Total				

[No. 15.]

STATEMENT OF TRAIN MILEAGE.

Half Year ended.		
	Passenger Trains	
	Goods and Mineral Trains	
	Total	

(Signed)

, Chairman or Deputy Chairman of Company.
, Secretary or Accountant of Company.

The Regulation of Railways Act, 1868.

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CERTIFICATE RESPECTING THE PERMANENT WAY, &c.

31 & 32 Vict.
c. 119.
Schedule I.

I hereby certify that the whole of the company's permanent way, stations, buildings, canals, and other works have, during the past half year, been maintained in good working condition and repair.

Date, , 18 . , Engineer.

CERTIFICATE RESPECTING THE ROLLING STOCK.

I hereby certify that the whole of the company's plant, engines, tenders, carriages, waggons, machinery, and tools, also the marine engines of the steam vessels, have during the past half year been maintained in good working order and repair.

Date, , 18 . , Chief Engineer or
Locomotive Superintendent.

AUDITOR'S CERTIFICATE.

As prescribed by Act 30 & 31 Victoria, c. 37, to follow.

SECOND SCHEDULE.

Date and Chapter of Act.	Title of Act.
3 & 4 Vict. c. 97 (in part)	An Act for regulating Railways in part; namely— Section Twenty.
5 & 6 Vict. c. 55 (in part)	An Act for the better regulation of Railways, and for the Conveyance of } in part; namely— Troops.
7 & 8 Vict. c. 85 (in part)	Section Nineteen. An Act to attach certain conditions to the construction of future Rail- ways authorised or to be authorised by any Act of the present or suc- ceeding Sessions of Parliament, and for other purposes in relation to railways. } in part; namely— Section Twenty-three.

LANDS CLAUSES CONSOLIDATION ACT, 1869.

32 & 33 VICT. c. 18.

32 & 33 Vict.
c. 18, ss. 1, 2.

An Act to amend the Lands Clauses Consolidation Act.

[24th June, 1869.]

WHEREAS it is expedient that the provisions contained in "The Lands Clauses Consolidation Act, 1845," should be amended:

Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Costs of arbitrations, where either party so requires, to be settled by a master of superior courts.

1. Where in England, under "The Lands Clauses Consolidation Act, 1845," or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior courts of law: and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation.

This section applies only to arbitrations under the Lands Clauses Act, 1845, and does not apply to arbitrations which embrace matters that could not be the subject, without agreement, of arbitration, under that Act (*Doulton v. Metropolitan Board of Works*, L. R. 5 Q. B. 333).

The incorporation of the Lands Clauses Acts in an Act substituting a special tribunal for the assessing of compensation entitles the party to his right to costs under these Acts (*Sharpe v. Met. Dis. Ry. Co.*, 4 Q. B. D. 645; 5 App. Cas. 425).

The taxation of costs is not a condition precedent to the right to sue for them (*ib.*).

The Court has no jurisdiction to review on motion the taxation of the costs of an inquiry before arbitrators under the Lands Clauses Act, 1845, taxed and settled under this Act (*Sandback Trustees v. North Staffordshire Ry. Co.*, 3 Q. B. D. 1; 47 L. J. Q. B. D. 10).

[2 is repealed by 46 & 47 Vict. c. 39.]

3. Where any lands by the special Act authorised to be taken are situate within the city and liberty of Westminster, then, with respect to those lands, in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any Act amending the same, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster, or his deputy, shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any Act amending the same as relate to the reference to a jury.

**32 & 33 Vict.
c. 18, ss. 3, 4.**

Provision re-
specting lands
in West-
minster.

4. This Act may be cited as "The Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

Short title.
Construction
of Acts.

THE COMPANIES CLAUSES ACT, 1869.

32 & 33 VICT. c. 48.

32 & 33 Vict.
c. 48,
ss. 1—3.

An Act to amend The Companies Clauses Act, 1863.

[2nd August, 1869.]

WHEREAS "The Companies Clauses Act, 1863," has been amended in certain respects as regards railway companies, and it is expedient that such amendments should extend to other companies :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Amendment
of Part III. of
26 & 27 Vict.
c. 118, as to
rate of interest
on debenture
stock.

1. Part III. of "The Companies Clauses Act, 1863," shall be read and have effect as if the following words, that is to say, "not exceeding the rate prescribed in the special Act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum," had not been inserted in section 22 of that Act, and any special Act of a company passed before the passing of this Act, prescribing any rate, shall be read and have effect as if no rate had been prescribed therein.

Restriction on
rate of interest
on debenture
stock already
authorised.

2. Provided, that any debenture stock, the creation whereof has been authorised by a company, but which has not been issued before the passing of this Act, shall not be issued on any terms other than those whereon it might have been issued if this Act had not been passed, unless and until the issue thereof, on terms other than as aforesaid, is after the passing of this Act authorised by the company in manner provided in section 22 of "The Companies Clauses Act, 1863."

Power to issue
debenture
stock, subject
to Part III. of
26 & 27 Vict.
c. 118.

3. Any company having power to raise money on mortgage or bond by virtue of any Act of Parliament, but not having power to create and issue debenture stock, may create and issue debenture stock subject to the provisions of Part III. of "The Companies Clauses Act, 1863" (relating to debenture stock), and Part III. of the said Act, as amended by this Act, shall be deemed to be incorporated with the special Act of every such company.

4. Money borrowed by a company for the purpose of paying off and duly applied in paying off bonds or mortgages of the company given or made under the statutory powers of the company shall, so far as the same is so applied, be deemed money borrowed within and not in excess of such statutory powers.

33 & 35 Vict.
c. 48, ss. 4—9.

Advances to
meet debentures
falling due.

5. Section 21 of "The Companies Clauses Act, 1863," shall, with respect to any company to which it is applicable under the provisions of this or any other Act, be read and have effect as if the following words, that is to say, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

Power to issue
shares or stock
at discount.

6. Any shares forming part of the capital (whether original or additional), authorised to be raised by any special Act of a company passed before the present session which have not been disposed of may be disposed of in manner provided by Part II. of "The Companies Clauses Act, 1863," as amended by this Act, and that Part, as so amended, shall be deemed incorporated with such special Act accordingly.

Power to issue
residue of original or other
capital at
discount.

7. Provided, that any shares, the creation whereof has been authorised by a company, but which have not been issued before the passing of this Act, shall not be issued on any terms other than those whereon the same might have been issued if this Act had not been passed unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorised by the company in manner provided by Part II. of "The Companies Clauses Act, 1863."

Restriction
on issuing at
discount
shares or stock
already authorised.

8. Provided always, that this Act shall not be construed to alter or extend the provisions of any Act relating to share capital in respect of which the amount of profits to be divided is limited to a fixed rate per centum upon the paid-up capital of the company.

Act not to
affect provisions
as to capital upon
which the dividend is
limited.

9. This Act may be cited as "The Companies Clauses Act, 1869."

Short title.

THE ABANDONMENT OF RAILWAYS ACT, 1869.

32 & 33 VICT. c. 114.

32 & 33 Vict. *An Act to amend the Law relating to the Abandonment of*
c. 114,
ss. 1—3. *Railways and the Dissolution of Railway Companies.*

[11th August, 1869.]

WHEREAS by the provisions of The Abandonment of Railways Act, 1850, as revived and amended by The Railway Companies (Scotland) Act, 1867, and The Railway Companies Act, 1867, a railway company may if their whole railway is authorised to be abandoned be wound up under The Companies Act, 1862; and doubts have arisen whether such company can be so wound up on the petition of a creditor or of any person except a shareholder, and it is expedient to remove such doubts and otherwise to amend the said Acts:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as “The Abandonment of Railways Act, 1869.”

Interpretation. **2.** In this Act “the court” means the High Court of Chancery in England, the Court of Chancery in Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland respectively.

Construction of Act.
13 & 14 Vict.
c. 83.
30 & 31 Vict.
cc. 126, 127. **3.** This Act shall be construed as one, so far as it extends to Scotland, with “The Abandonment of Railways Act, 1850,” as amended by “The Railway Companies (Scotland) Act, 1867,” and so far as it extends to England or Ireland with “The Abandonment of Railways Act, 1850,” as amended by “The Railway Companies Act, 1867,” and those Acts are in this Act referred to as the principal Acts.

4. Where a warrant has been granted under the principal Acts for the abandonment of the whole railway of any railway company a petition for winding up the affairs of such company may be presented under The Companies Acts, 1862 and 1867, by the company, or by any person who under the last-mentioned Acts is authorised to present a petition for winding up a company, or by any person upon whose application the Board of Trade may proceed in pursuance of section thirty-two of The Railway Companies (Scotland) Act, 1867, and The Railway Companies Act, 1867, as the case may be, and for that purpose the railway company whose railway is so authorised to be abandoned shall be deemed to be an unregistered company which may be wound up under The Companies Acts, 1862 and 1867, and the provisions of the principal Acts which remain in force relating to winding up shall be construed as if The Companies Acts, 1862 and 1867, and the winding-up provided by this section, were therein referred to.

33 & 34 Vict.
c. 114, ss. 4, 5.

Petition for winding up of railway company may be presented under 25 & 26 Vict. c. 89, and 30 & 31 Vict. c. 131.

Under section 31 of the Abandonment of Railways Act, 1850, it was held that a creditor could not present a petition for winding up the company after a warrant for abandonment (*In re W. Kent Extension Ry. Co.*, 8 Eq. 356).

For the form of order for winding up a railway company after a warrant for abandonment, see *Re Skipton & Wharfedale Ry. Co.*, 20 L. T. N. S. 359.

Section 199 of the Companies Act, 1862, enacts in effect that any company "except railway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under this (the Companies) Act" may be wound up under the Companies Act.

Winding up of railway company.

It has been held that a company whose principal object was the construction of docks, but having power also to make a branch railway, was not a railway company within the above exception (*In re Exmouth Docks Co.*, 17 Eq. 181).

It has also been held that where the works authorised to be constructed by the company are for the public good, and the Act of incorporation gives creditors specific remedies, the court will not make a winding-up order under the Companies Act, 1862, until the specific remedies have been tried (*In re Exmouth Docks Co.*, 17 Eq. 181; *In re Herne Bay Waterworks Co.*, 10 Ch. D. 42).

The question whether a railway company, after being registered under the Companies Acts, 1862 and 1867, can be ordered to be wound up under those Acts without a warrant for abandonment, appears in England to be still open.

It has, however, been held in Ireland that in such a case a winding-up order can be made (*In re Ennis & W. Clare Ry. Co.*, 3 L. R. Ir. 94. See *Ward v. Sittingbourne & Sheerness Ry. Co.*, 9 Ch. 488).

5. If the warrant for the abandonment was made on condition that the money deposited as security for the completion of the railway, or the stocks, funds, or securities in which the same is invested, or the money secured by any bond conditioned for the completion of the railway, or for payment of money in default thereof, should be applied as part of the assets of the company, the court may, if it think fit, direct that such money, stocks, funds, and securities shall not be applicable for the payment of any debt or part of a debt which, regard being had to what is fair and reasonable as between all parties interested under all the circumstances of the case, appears to the court to have been incurred on account of the promotion of the company.

Application of deposit, &c.

Any person who provided such money or any part thereof, or who entered into such bond, may, subject to any directions or rule of the court, attend all proceedings under this section and

**33 & 34 Vict.
c. 114, ss. 6, 7.**

other proceedings in the winding-up, and apply to the court to act under this section.

For the cases as to the application of the deposit see the notes to section 5 of the Parliamentary Deposits Act (9 Vict. c. 20) *ante*.

The costs of a petition by the depositor for payment out of a portion of the deposit has been allowed against the general assets, of which the residue of the deposit formed part (*In re Laugharne Ry. Co.*, 12 Eq. 454).

Where the deposit has been made with borrowed money, the lenders are not entitled to have their rights specially provided for (*Re Waterford, &c. Ry. Co.*, 1 R. 4 Eq. 490).

The liquidator of the company has no right to set off a debt due to a promoter against the money payable by the promoter under his bond (*In re Dublin & Rath-coole Ry. Co.*, 1 L. R. Ir. 98).

**Transfer of
deposit and
assignment of
bond.**

6. Where the warrant for abandonment is made on condition that the money deposited as security for the completion of the railway, or the stocks, funds or securities in which the same is invested, or the money secured by any bond conditioned for the completion of the railway or for payment of money in default thereof, shall be applied as part of the assets of the company, the following provisions shall have effect:

- (1.) The Court in which the company is being wound up may order such money, stocks, funds, or securities, or so much thereof as is required to be applied as assets of the company, to be paid, transferred, or delivered out to the official liquidator, and unless the Court is satisfied that the same or any part thereof are not required to be applied as assets, shall not order the same or any part thereof to be paid, transferred, or delivered out to any other person:
- (2.) The commissioners of her Majesty's treasury, upon the application of the official liquidator, made with the sanction of the Court, may, if they think fit, assign the bond to the official liquidator, and upon such assignment the bond shall be deemed to have been entered into with the official liquidator in his official name, and with his successors in that office, and may, subject to the sanction of the Court, be enforced accordingly:
- (3.) Any bond so assigned may, after a sufficient sum has been paid thereunder as assets of the company, be cancelled by the Court.

For the cases as to the application of the deposit see the notes to section 5 of the Parliamentary Deposits Act, 9 Vict. c. 20.

For the construction of an Act regulating the application of the deposit made by the promoters of a tramway, see *In re Bradford Tramways Co.*, 2 Ch. D. 373; 4 Ch. D. 18; and *In re Lowestoft, Yarmouth & Southwold Tramways Co.*, 6 Ch. D. 484.

**Saving for
rights to
residue of
deposit.**

7. Nothing in the principal Acts or in this Act shall affect any right to that part of the money deposited as security for the completion of the railway, or of the stocks, funds, or securities on which the same is invested, or of the money secured by any bond conditioned for the completion of the railway, which is not applied in payment of the debts and liabilities of the company, or required for that purpose.

8. Where a company, no part of the railway of which is open for traffic, has been required by any judgment or order of any court to pay a sum of money to any person or body corporate, and has made default in such payment, the Board of Trade may proceed under the principal Acts, upon the application of such person or body, in the same manner as if such person or body were mentioned in that behalf in the said section.

32 & 33 Vict.
c. 114,
ss. 8—10.

Application
for abandon-
ment by
judgment
creditor.

The Abandonment of Railways Act, 1850, is, by The Railway Companies Act, 1867, s. 31, extended to all companies authorised to make railways by Acts passed before the session of the summer of 1867.

It appears, therefore, that this section applies only to such companies, and this is the view taken by the Board of Trade (*In re Birmingham & Lichfield Junction Ry. Co.*, 18 Ch. D. 155).

9. The notice given in pursuance of section seventeen of The Abandonment of Railways Act, 1850, may, where there is no secretary of the company, or no office of the company, require claims or demands to be sent to such person or to such place as the Board of Trade direct.

Notices under
sect. 17 of
13 & 14 Vict.
c. 83.

[10 is repealed by 46 & 47 Vict. c. 39.]

THE

RAILWAYS (POWERS & CONSTRUCTION)
ACTS, 1864, AMENDMENT ACT, 1870.

33 & 34 VICT. c. 19.

33 & 34 Vict.
c. 19, ss. 1—3.*An Act to amend “The Railway Companies Powers Act, 1864,”
and “The Railways Construction Facilities Act, 1864.”*

[20th June, 1870.]

WHEREAS it is expedient to amend “The Railway Companies Powers Act, 1864,” and also “The Railways Construction Facilities Act, 1864:”

Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as “The Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870.”

[2 is repealed by 46 & 47 Vict. c. 39.]

Powers of
Board of
Trade where
notice of
opposition
lodged.

3. Any railway or canal company, which for the purposes of this Act shall include the owners, lessees, or proprietors of any canal or inland navigation, may, in case it desires to be heard by counsel, agents, and witnesses against any application for a certificate under The Railway Companies Powers Act, 1864, or for a certificate authorising any proposed undertaking under The Railways Construction Facilities Act, 1864 (each of which Acts is in this Act respectively referred to as the Act of Application), lodge at the office of the Board of Trade, within the time prescribed by the schedule to this Act annexed, a notice in writing to that effect (in this Act referred to as a notice of opposition), in the forms set forth in the same schedule, with such variations as circumstances require.

Where a notice of opposition has been lodged the Board of Trade may nevertheless, if they think fit, proceed upon the application, but they shall in such case settle a provisional certificate in accordance with the provisions of this Act.

Every provisional certificate under this Act shall be settled in

like manner, shall certify to the like effect, and contain the like provisions in every respect as if the same were a draft certificate settled by the Board of Trade, under the authority of the Act of Application in a like case, but where no notice of opposition was lodged.

33 & 34 Vict.
c. 19, ss. 4, 5.

When any such provisional certificate is confirmed in manner by this Act provided, the same shall have all the force and operation of a certificate duly made and issued by the Board of Trade, under the authority of the Act of Application, but previously to such confirmation it shall not be of any validity whatsoever.

When any provisional certificate is settled under this Act notice thereof shall be given by the promoters in like manner as if the same were a draft certificate under the Act of Application according to the provisions of such Act in that behalf.

The costs of and connected with the preparation and making of each provisional certificate shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the provisional certificate.

As to payment
of costs of
orders.

4. On proof to the satisfaction of the Board of Trade that notice of such certificate was duly given in manner aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days after such proof, procure a Bill to be introduced into either House of Parliament for an Act to confirm the provisional certificate, which shall be set out at length in the schedule to the bill.

Confirmation
of provisional
certificate by
Act of Parlia-
ment.

If while any such bill is pending in either House of Parliament a petition is presented against any provisional certificate comprised therein, the bill, so far as it relates to the certificate petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of Parliament confirming any provisional certificate shall be deemed a public general Act.

The third paragraph is omitted. It was repealed by 46 & 47 Vict. c. 39.

5. Every railway made under the authority of a certificate under the said Act or this Act shall be made on such gauge as shall be prescribed by such certificate.

Sect. 33 of
27 & 28 Vict.
c. 121,
repealed.

The beginning of the section is omitted. It was repealed by 46 & 47 Vict. c. 39.

Sections four, six, seven, and eight of the Act of the session of the ninth and tenth years of the reign of her present Majesty, chapter fifty-seven, intituled "An Act for regulating the Gauge of Railways," shall apply to any railway made under the authority of any such certificate as aforesaid, and to the gauge thereby prescribed.

Application of
sects. 4, 6, 7,
and 8 of 9 & 10
Vict. c. 57.

For the purposes of such application the provisions of the certificate relating to gauge shall be deemed to be included in the provisions of the said Act of the ninth and tenth years of the reign of her present Majesty, chapter fifty-seven.

Gauge of
railways.

33 & 34 Vict.
c. 19, s. 6.

Amendment
of Part IV. of
the schedule
to 27 & 28
Vict. c. 121.

6. All enactments amending, perpetuating, or otherwise affecting the enactments described in Part IV. of the schedule to the said Railways Construction Facilities Act, 1864, and which are now in force, or which may hereafter become law, shall, in like manner and subject to the like variations and provisions as the enactments described in the said schedule, extend and apply, as the case may require, to the railway, and to the company or persons empowered by the certificate under the said Act or this Act to make the railway, and shall in all respects operate in relation thereto respectively as if they were expressly repeated and re-enacted in the said Act, save where the same are expressly varied or excepted by such certificate.

THE SCHEDULE REFERRED TO IN THE FOREGOING ACT.

Notice of Opposition.

In the matter of

The Railways Companies Powers Act, 1864, and The Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870,

and

The application of the _____ Railway Company for a certificate, the draft whereof is intituled [*set out title*].

We, the _____ Railway [*or Canal*] Company hereby declare and give notice that we desire to be heard by counsel, agents, and witnesses against the granting to the above-named railway company of the powers sought to be obtained by them by the above-mentioned application.

Dated this _____ day of _____ 18 .

Witness *A.B.*

(*L.S.*)

Or,

Notice of Opposition.

In the matter of

The Railways Construction Facilities Act, 1864, and the Railways (Powers and Construction) Acts, 1864, Amendment Act, 1870,

and

The (proposed) _____ Railway.

We, the _____ Railway [*or Canal*] Company hereby declare and give notice that we desire to be heard by counsel, agents, and witnesses against the above-mentioned proposed undertaking.

Dated this _____ day of _____, 18 .

Witness, *A. B.*

(*L.S.*)

Time for lodging Notice of Opposition.

Notice of opposition by a Railway or Canal Company is to be lodged at the office of the Board of Trade not later than the 1st day of August, or the 1st day of January, next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

THE DEBENTURE STOCK ACT, 1871.

34 & 35 VICT. c. 27.

An Act to remove Doubts as to the Power of Trustees to invest Trust Funds in Debenture Stocks.

34 & 35 Vict.
c. 27, ss. 1—3.

[29th June, 1871.]

WHEREAS by divers Acts of Parliament, and more particularly by the Companies Act, 1863, and the Acts amending the same, companies authorised to issue debenture stock are empowered to raise, by means of such stock, all moneys which they may for the time being be authorised to raise on mortgage or bond :

And whereas doubts are entertained whether it is lawful for trustees who may be authorised to invest trust funds in the mortgages or bonds of companies to invest such funds in debenture stock :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Where a power has before the passing of this Act been or shall at any time hereafter be given to trustees to invest trust funds in the mortgages or bonds of a railway company or of any other description of company, such power shall, unless the contrary is expressed in the instrument creating the power, be deemed to include a power to invest such funds in the debenture stock of a railway company or such other company as aforesaid, and an investment of trust funds in debenture stock may be made accordingly.

Power to trustees to invest in debenture stock.

2. The expression "trustees" shall include executors and administrators and any other persons holding funds in a fiduciary capacity.

Definition of "trustees."

3. This Act may be cited for all purposes as "The Debenture Stock Act, 1871."

Short title.

THE
REGULATION OF RAILWAYS ACT, 1871.

34 & 35 VICT. c. 78.

34 & 35 Vict.
c. 78, ss. 1, 2.

An Act to amend the Law respecting the Inspection and Regulation of Railways. [14th August, 1871.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Construction
of Act and
short title.

1. This Act so far as is consistent with the tenor thereof shall be construed as one with the Acts mentioned in schedule two to this Act and with the Regulation of Railways Act, 1868, and those Acts and this Act may be cited together as the Regulation of Railways Acts, 1840 to 1871 ; and this Act and each of the Acts mentioned in schedule two to this Act may be cited as the Regulation of Railways Act of the year in which it was passed.

Interpretation
of terms.

2. In this Act—

The term "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise, which has been authorised by any special Act of Parliament or by any certificate under Act of Parliament :

The term "company" means a company incorporated either before or after the passing of this Act for the purpose of constructing, maintaining, or working a railway in the United Kingdom (either alone or in conjunction with any other purpose), and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom or parties to an agreement for working a railway in the United Kingdom :

The term "person" includes a body corporate :

Court of sum-
mary jurisdic-
tion.

The term "court of summary jurisdiction" means any justices of the peace, metropolitan police magistrate, stipendiary magistrate, sheriff, sheriff substitute, or other magistrate or officer, by whatever name called, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

Inspection of Railways.

34 & 35 Vict.
c. 78, ss. 3—6.

3. The Board of Trade may from time to time appoint any person to be inspector for the purpose of inspecting any railway and of making any inquiry with respect to any railway or into the cause of any railway accident which the Board of Trade are authorised to make or direct, and of enabling the Board of Trade to carry the provisions of any general Act relating to railways into execution, or for any of such purposes: Provided that no person so appointed shall exercise any powers of interference in the affairs of any company.

Board of Trade may appoint inspectors of railways.

4. Every inspector under this Act shall for the purpose of any inspection or inquiry which he is directed by the Board of Trade to make or conduct have the following powers; (that is to say),

Powers of inspectors of railways.

- (1.) He may enter and inspect any railway and all the stations, works, buildings, offices, stock, plant, and machinery belonging thereto:
- (2.) He may by summons under his hand require the attendance of any person who is engaged in the management, service, or employment of a company as defined by this Act, and whom he thinks fit to call before him and examine for the said purpose, and may require answers or returns to such inquiries for the said purpose as he thinks fit to make from such person or company:
- (3.) He may require and enforce the production of all books, papers, and documents of a company which he considers important for the said purpose.

5. The provisions of the Regulation of Railways Act, 1842, and the Acts amending the same, with respect to the opening of any railway, shall extend to the opening of any additional line of railway, deviation line, station, junction, or crossing on the level which forms a portion of or is directly connected with a railway on which passengers are conveyed, and has been constructed subsequently to the inspection of such railway on behalf of the Board of Trade previous to the original opening of such railway: Provided always, that the Board of Trade may, with respect to any of the works in this section mentioned, from time to time upon the application of any railway company dispense with any notice which, under the provisions of the said Acts, is required to be given to the Board of Trade previous to opening any railway.

Extension of 5 & 6 Vict. c. 55, ss. 4 to 6, to new works.

Accidents.

6. Where in or about any railway or any of the works or buildings connected with such railway, or any building or place, whether open or enclosed, occupied by the company working such railway, any of the following accidents takes place in the course of working any railway; (that is to say),

Companies to make returns of accidents to Board of Trade.

- (1.) Any accident attended with loss of life or personal injury to any person whomsoever;

34 & 35 Vict.
c. 78, s. 7.

- (2.) Any collision where one of the trains is a passenger train ;
- (3.) Any passenger train or any part of a passenger train accidentally leaving the rails ;
- (4.) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused or to be likely to cause loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Board of Trade,

the company working such railway, and also, if the accident happen to a train belonging to any other company, such last-mentioned company shall send notice of such accident and of the loss of life or personal injury (if any) occasioned thereby to the Board of Trade.

Such notice shall be in such form and shall contain such particulars as the Board of Trade may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place.

The Board of Trade may from time to time by order direct that notice of any class of accidents shall be sent to them by telegraph, and may revoke any such order. Notice of every such order shall be sent to every railway company, and while it is in force notice of every accident of the class to which the order relates shall be sent to the Board of Trade by telegraph immediately after the accident takes place.

Every company who fail to comply with the provisions of this section shall be liable for each offence to a penalty not exceeding twenty pounds.

Inquiry into accidents, and formal investigation in serious cases.

7. The Board of Trade may direct an inquiry to be made by an inspector into the cause of any accident, of which notice is for the time being required by or in pursuance of this Act to be sent to the Board of Trade ; and where it appears to the Board of Trade, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Board of Trade may, by order, direct such investigation to be held, and with respect to such investigation the following provisions shall have effect :

- (1.) The Board of Trade may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist an inspector in holding the same, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of an inspector or any other assessor or assessors named in the order :
- (2.) The persons holding any such formal investigation (hereinafter referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and

circumstances of the accident, and enabling them to make the report in this section mentioned :

**34 & 35 Vict.
c. 78, s. 8.**

- (3.) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and all the powers of an inspector under this Act, and in addition the following powers; namely,

(a.) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose :

(b.) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make :

(c.) They may require and enforce the production of all books, papers, and documents which they consider important for the said purpose :

(d.) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :

(e.) Every person so summoned not being a person engaged in the management, service, or employment of a company, or otherwise connected with a company, shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request, under the hands of the members of the court shall ascertain and certify the proper amount of such expenses :

- (4.) The inspector making an inquiry into any accident and the court holding an investigation of any accident shall make a report to the Board of Trade stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the investigation which they think right to make to the Board of Trade, and the Board of Trade shall cause every such report to be made public in such manner as they think expedient.

8. Where any coroner in England holds or is about to hold an inquest on the death of any person occasioned by an accident, of which notice for the time being is required by or in pursuance of this Act to be sent to the Board of Trade, and makes a written request to the Board of Trade in this behalf, the Board of Trade may appoint an inspector or some person possessing legal or special knowledge to assist in holding such inquest, and such appointee shall act as the assessor of the coroner, and shall make the like report to the Board of Trade, and the report shall be

**Appointment
of an assessor
to coroner.**

34 & 35 Vict.
c. 78,
ss. 9—11.

made public in like manner as in the case of a formal investigation of an accident under this Act.

Railway Statistics.

Companies to
furnish state-
ments of
capital, traffic,
and working
expenditure.

9. Every company shall annually prepare returns of their capital, traffic and working expenditure for the last preceding financial year of the company in accordance with the forms contained in schedule one to this Act, and a copy of each return, signed by the chairman or deputy-chairman of the directors of the company, and by the officer of the company responsible for the correctness of each return, or any part thereof, shall be forwarded by the company to the Board of Trade at the times following ; (that is to say,)

if the company is an incorporated company, within fourteen days after the first ordinary half-yearly meeting of the company held in each year :

if the company is not an incorporated company, or fails to hold half-yearly meetings, not later than the thirty-first day of March in each year.

Any company which fails to forward the said return in accordance with the provisions of this section shall be liable to a penalty not exceeding five pounds for every day during which such default continues.

The Board of Trade, with the consent of a company, may alter the said forms as regards such company for the purpose of adapting them to the circumstances of such company or of better carrying into effect the objects of this section.

Penalty for
false return.

10. If any return which is required by this Act is false in any particular to the knowledge of any person who signs the same, such person shall be liable on conviction thereof on indictment to fine and imprisonment, or on summary conviction thereof to a penalty not exceeding fifty pounds.

Miscellaneous.

Disobedience
to or obstruc-
tion of inspec-
tor or court.

11. If any person, without reasonable excuse (proof whereof shall lie on him), does any of the following things ; namely,

(1.) Having been summoned, and having had the expenses (if any) to which he is entitled tendered to him, fails to attend as a witness before any inspector under this Act, or before a court holding an investigation under this Act, or fails when required by the inspector or such court in pursuance of this Act so to do, to make any answer, or to give any return, or to produce any document, or to make or sign any declaration ; or

(2.) Prevents or impedes the inspector or such court in the execution of his or their duty,

he shall for every such offence incur a penalty not exceeding ten pounds, and in the case of a refusal to make any return or produce

any document, not exceeding ten pounds during every day that such failure continues; and where the offence consists of preventing or impeding as aforesaid, the inspector, or any member of such court, or any person called by him to his assistance, may seize and detain the offender until he can be conveniently taken before a court of summary jurisdiction, to be dealt with according to law.

34 & 35 Vict.
c. 78,
ss. 12—15.

12. Where a railway company under a contract for carrying persons, animals or goods by sea procure the same to be carried in a vessel not belonging to the railway company, the railway company shall be answerable in damages in respect of loss of life or personal injury, or in respect of loss of or damage to animals or goods in like manner and to the same amount as the railway company would be answerable if the vessel had belonged to the railway company; provided that such loss of life or personal injury, or loss or damage to animals or goods, happens to the person, animals or goods (as the case may be) during the carriage of the same in such vessel, the proof to the contrary to lie upon the railway company.

Limitation of liability of companies on sea voyages in certain cases.

13. The following Acts—

The Act of the session of the tenth and eleventh years of her Majesty's reign (chapter eighty-two), "for the more speedy trial and punishment of juvenile offenders;" and

The Act of the session of the thirteenth and fourteenth years of her Majesty's reign (chapter thirty-seven), "for the further extension of summary jurisdiction in cases of larceny,"

Punishment of juvenile offenders for casting stones, &c., on railway carriages, &c.

shall have effect as if there had been mentioned therein, in addition to the offence of larceny, the several offences following:—

The offences mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of her Majesty's reign (chapter one hundred), "to consolidate and amend the Statute Law of England and Ireland relating to offences against the person;" and

The offences mentioned in section thirty-five of the Act of the same session (chapter ninety-seven), "to consolidate and amend the Statute Law of England and Ireland relating to malicious injuries to property."

Some words repealed by 46 & 47 Vict. c. 39, are omitted.

14. Section twenty-three of "The Regulation of Railways Act, 1868," shall have effect as if the words "after having once received warning," were substituted therein for the words "after having received warning."

Penalty for trespasses on railways.

Some words repealed by 46 & 47 Vict. c. 39, are omitted.

15. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consoli-

Recovery, &c. of penalties.

34 & 35 Vict. **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.** **34 & 35 Vict.**
c. 78, **c. 78,** **c. 78,** **c. 78,** **c. 78,** **c. 78,** **c. 78,** **c. 78,** **c. 78,** **c. 78,**
ss. 16—18. **ss. 16—18.** **ss. 16—18.** **ss. 16—18.** **ss. 16—18.** **ss. 16—18.** **ss. 16—18.** **ss. 16—18.** **ss. 16—18.** **ss. 16—18.**

Application **16.** In the application of this Act to Scotland—
of Act to (1.) The term “attending on subpoena before a court of record”
Scotland. means attending on citation the Court of Justiciary.
 (2.) The Queen’s and Lord Treasurer’s Remembrancer shall
 perform the duties of a master of one of the Superior
 Courts under this Act.
 (3.) The term “stipendiary magistrate” means a sheriff or
 sheriff substitute.

[17 is repealed by 47 & 48 Vict. c. 39.]

Commence- **18.** This Act shall not come into operation until the first day of
ment of Act. November, one thousand eight hundred and seventy-one.

SCHEDULE I.

Session and Chapter.	Title of Act.
3 & 4 Vict. c. 97	An Act for regulating Railways.
5 & 6 Vict. c. 55	An Act for the better regulation of Railways and for the conveyance of Troops.
7 & 8 Vict. c. 85	An Act to attach certain conditions to the con- struction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways.

THE following Forms have been approved by the Board of
Trade in place of those in Schedule I. :—

34 & 35 Vict.
c. 78.
Form I.

Capital raised by Loans and Debenture Stock on 31st December, 1888.					Total Capital paid up and Capital raised by Loans and Debenture Stock on 31st December, 1888.	Subscriptions to other Companies.	REMARKS.
Loans.	Rate of Interest.	£ Debenture Stock.	Rate of Interest.	Total raised by Loans and by Debenture Stock on 31st December, 1888.			
£	per cent.	£	per cent.	£	£	£	

(Continued from p. 654.)

NOTE.—This Return is to be signed by the Chairman or Deputy Chairman of the Directors of the Company, and by the officer of the Company responsible for the correctness of the Return or any part thereof.

* This should include all capital authorised to be raised by Acts of Parliament, or by Certificates of the Board of Trade under the Railways Companies Powers Act, 1864, but should not include capital authorised only for purposes which have lapsed by abandonment or otherwise.

† In cases where a subscription is authorised out of *existing* capital, no addition should be made in respect of it to the sum entered in this column, but only to the sum entered in the last column.

‡ Care should be taken not to confound Debenture *Stock* with ordinary Debenture *Loans*, and not to enter the same sum under both heads.

34 & 35 Vict.
c. 78.
Form II.

Continued on p. 657.

Any Receipts not returned by the Working Company should be entered on this Form.

II.

Return in pursuance of Section 9 of the Regulation of Railways Act, 1871, of the Traffic in Passengers and Goods, during the Year ended 31st December, 1886,* upon the _____ Railway, and upon the _____ Railways belonging to, Worked or Leased by, the _____ Railway Company.

NAME OF COMPANY.	Length of Line open on 31st December, 1886.†				Passenger Traffic.				Goods Traffic (exclusive of Live Stock).‡		Number of Miles Travelled by Trains.				
	Single Lines.	More than Single.			1st Class.	2nd Class.	3rd Class (including Parliamentary.)	Total.	Holders of Season or Periodical Tickets.¶	Minerals.	General Merchandise.	By Passenger Trains.	By Goods and Mineral Trains.	Total.	
		Double Lines.	Three Lines.	Four or more Lines.											Total.

Continued from p. 656.

Receipts (Gross) from Passenger Traffic.					Receipts (Gross) from Goods Traffic.				Miscellaneous :		Total Receipts from all sources of Traffic.
Receipts from Passengers.					Total Receipts from excesses, Parcels, Carriages, Horses, Dogs, &c., conveyed in Passenger Traffic.	Receipts from Mails.	Total Receipts from Passenger Traffic and Mails.	Merchandise.	Live Stock.	Minerals.		Total Receipts from Goods Traffic.
1st Class.	2nd Class.	3rd Class (Including Parliamentary).	Holders of Season or Periodical Tickets.	Total from Passengers.	£	£	£	£	£	£	£
£	£	£	£	£	£	£	£	£	£	£	£

NOTE.—This Return is to be signed by the Chairman or Deputy-Chairman of the Directors of the Company, and by the Officer of the Company responsible for the correctness of the Return or any part thereof.

• If the Accounts of the Company are made up to a period differing from the above, the period which this Return embraces should be stated.

† Insert here the names of all Railways the Traffic of which is included in this Return.

‡ This should not include the length of those Lines belonging to other Companies over which the Company have merely "running powers." It should, however, include part of the length of "Joint Lines," proportionate to the interest of the Company therein.

§ Return Tickets to be counted as two Passengers, and Children as whole Passengers.

|| Insert here the actual number of Ticket Holders (including weekly tickets taken by working men), and not an estimate of the number of journeys performed by them.

34 & 35 Vict.
c. 78.
Form II.

34 & 35 Vict.
c. 78.
Form III.

Any Expenditure not returned by the Working Company should be entered on this Form.

III.

Return in pursuance of Section 9 of the Regulation of Railways Act, 1871, by the _____ Railway Company, of the
Working Expenditure and Rolling Stock of the _____ Railway, and of the* _____ Railways
belonging to, worked or leased, by the _____ Railway Company.

Continued on p. 659.

NAME OF COMPANY.	Length of Line open on 31st December, 1888 †	WORKING EXPENDITURE During the Year ended 31st December 1888. †						Compensa- tion for Personal Injury, &c. ‡
		Including Salaries, Wages, Materials, &c.					Rates and Taxes. §	Government Duty on Passengers.
		Maintenance and Renewal of Way and Works and Stations.	Locomotive Power (including Stationary Engines).	Repairs and Renewals of Carriages and Waggons.	Traffic Charges (working Expenses of Passenger and Goods Traffic).	General Establish- ment Charges.		
	Miles.	£	£	£	£	£	£	£

WORKING EXPENDITURE During the Year ended 31st December 1886.†					ROLLING STOCK on 31st December, 1886.					
Compensation for Damage and Loss of Goods. ‡	Local and Parliamentary Expenses.	Steamboat, Canal, Harbour, and Dock Expenses.	Miscellaneous Working Expenditure not included in the foregoing.	Total Working Expenditure.	Carriages, Waggon, Trucks, &c.					
					Miscellaneous Locomotives.	Carriages used for the Conveyance of Passengers only.	Other Vehicles attached to Passenger Trains.	Waggon of all kinds used for the Conveyance of Live Stock, Minerals, or General Merchandise.	Any other Carriages or Waggon used on the Railway, not included in the preceding Columns.	Total Number of Vehicles of all Descriptions for Conveyance of Passengers, Live Stock, Ballast, &c.
£	£	£	£	£	No.	No.	No.	No.	No.	No.

Continued from p. 658.

U U 2

NOTE.—This Return is to be signed by the chairman or deputy-chairman of the directors of the company, and by the officer of the company responsible for the correctness of the Return, or any part thereof.

* Here insert the names of the railways included in this return.

† If the company's accounts are made up to a period differing from the above, the period which this return embraces should be stated.

‡ This should not include the length of those lines over which the company have merely "running powers." It should, however, include part of the length of "Joint Lines" proportionate to the interest of the company therein.

§ In the case of Scotch railways "Pen Duties" should not be included under this head, but under that of "Miscellaneous."

|| "Legal expenses" connected with compensations should not be included under these heads, but under that of "Legal and Parliamentary Expenses." N.B.—This return should include sums paid out of renewal or reserved funds of any kind, and the amounts so paid should be stated under the several heads to which they are applicable. It should not, however, include "Interest on Loans."

34 & 35 Vict.
c. 78.
Form III.

34 & 35 Vict.
c. 78.

Instructions
to Railway
Companies.

INSTRUCTIONS

TO RAILWAY COMPANIES PREPARING RETURNS UNDER THE ACT
34 & 35 VICT. c. 78.

Land Rent-charges.—Capital Return.

In the return of paid-up capital, &c., the capitalized value of land rent-charges should be included, and stated in the column for loans, and the rate per cent. per annum shown in the interest column. *But Scotch Companies are not to capitalize Feu Duties, the annual payments on account of which are to be included with Miscellaneous Expenditure on Form III.*

Season Tickets.

The Board of Trade having communicated with the various companies on the subject of their present system of recording the number of season tickets issued by them, and having received replies from almost all companies, have come to the conclusion that the best way to secure uniformity will be for companies to give the equivalent number of annual tickets issued within each year; which will be the sum of the numbers of yearly, half-yearly, quarterly, and weekly tickets, &c., divided respectively by 1, 2, 4, or 52, &c., as the case may be. If the equivalent number of the 1st, 2nd, and 3rd class periodical tickets can be given, they should be given.

Should any of the companies be unable to do this, then the number of periodical tickets issued within the year to which the account refers should be given; no notice being taken in the following annual return of the tickets remaining in force which had been issued in the previous year, as the receipts from them would have been brought into account in the year in which they were issued.

N.B.—Companies should, of course, state on their returns which of the two above courses has been adopted.

Tickets issued by one company which entitle the holder to travel over the line of the issuing company as well as over that of another, and from which both companies receive a proportionate part of the fare, should be counted as tickets issued by both companies; but when the issuing company has merely running powers over the lines of other companies who do not share the receipts, or when more than one company has lines running between the same places, and tickets are issued entitling the owner to travel by the lines of either company, the issuing company should alone count the ticket.

Train Mileage.

The number of miles returned by each company as travelled by trains should include the distances run by their trains for the purposes of their own traffic on their own lines and on the lines of other companies, but should not include any allowance either for shunting or for the employment of more than one engine to a train, or for pilot engines, nor should it include the distances run

on the lines of the company by the trains of other companies for the purposes of the traffic of such other companies. When from the nature of either the passenger or the goods traffic the trains are obliged to return or to proceed to the point of loading empty, then the miles so run should be included; but the distances run by empty trains from stations to carriage depôts and *vice versâ*, simply for making up or re-marshalling trains, or putting away carriages, or bringing trains to stations from carriage depôts, should not be included as train mileage.

**34 & 35 Viot.
c. 78.
Instructions
to Railway
Companies.**

Receipts for Merchandise.

As the greater number of the large companies already return the receipts for the carriage of merchandise less the cost of cartage, it is requested that, for the sake of uniformity, all companies, including those which do their own cartage, will in future follow the same rule. But in the half-yearly statements of accounts printed under 31 & 32 Vict. c. 119, the amounts deducted on account of cartage from the gross merchandise receipts would of course still be shown in the margin.

Worked Lines.

Companies working the lines of other companies should include in their returns, under the several heads, the whole of the traffic, gross receipts, and working expenditure of the worked lines, and not their proportion only of the same.

SPECIAL RETURN FOR THE BOARD OF TRADE.

The Board of Trade will be obliged by the necessary particulars being inserted in this special return, which should be forwarded to the commercial department with the returns required under the Regulation of Railways Act of 1871 (34 & 35 Vict. c. 78).

Receipts from Season and Periodical Tickets, including Workmen's Weekly Tickets, for the year ended 31st December, 1886.

NAME OF COMPANY.	First Class.	Second Class.	Third Class (including Workmen's Weekly Tickets).	Total.
	£	£	£	£

Note.—If the Company's accounts are made up to a period differing from the above, the period to which this return refers should be given.

34 & 35 Vict.
c. 78.
Order of Board
of Trade.

ORDER

Made by the Board of Trade in pursuance of the Regulation of Railways Act (1871), 34 & 35 Vict. c. 78, s. 6.

WHEREAS by the 6th section of the Regulation of Railways Act, 1871, it is enacted that—

“Where in or about any railway or any of the works or buildings connected with such railway, or any building or place, whether opened or enclosed, occupied by the company working such railway, any of the following accidents takes place in the course of working any railway; (that is to say,)

- (1.) Any accident attended with loss of life or personal injury to any person whomsoever;
- (2.) Any collision where one of the trains is a passenger train;
- (3.) Any passenger train or any part of a passenger train accidentally leaving the rails;
- (4.) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused or to be likely to cause loss of life or personal injury, and which may be specified in that behalf by any order to be made from time to time by the Board of Trade;

the company working such railway, and also, if the accident happen to a train belonging to any other company, such last-mentioned company shall send notice of such accident and of the loss of life or personal injury (if any) occasioned thereby to the Board of Trade.

“Such notice shall be in such form and shall contain such particulars as the Board of Trade may from time to time direct, and shall be sent by the earliest practicable post after the accident takes place.”

Now, therefore, the Board of Trade in pursuance of the power by the said section conferred upon them, order that in addition to the notice of accidents specified in sub-sections (1) (2) (3) and (4) above recited, notice in conformity with the provisions of the said section shall be sent to them by every company to which such section applies, of every accident of the nature following, that is to say—

1. As regards the locomotive power and rolling stock:
 - a. The bursting of a boiler.
 - b. The failure of a rope used in working an incline.
 - c. The failure of a wheel or tyre.
 - d. The failure of an axle.
 - e. The failure of the hornplate of an engine.
 - f. The failure of the axle-guard of any vehicle in a passenger train.
 - g. The failure of breaks used in passenger trains.

- h. The failure of any other part of locomotive engines, tenders, or vehicles not included in the above, which leads to an accident to a passenger train.

34 & 35 Vict.
c. 78.
Order of Board
of Trade.

NOTE.—*Any return of the failure of a boiler, a tyre, or an axle, should be accompanied by a diagram with particulars of construction and failure, and by a description of the nature of the materials it was made of, and the amount of work it had performed. In the case of a tyre, the mode employed of fastening it on the wheel, and the results of its failure as to the number of pieces into which it broke, and whether it remained on or flew off the wheel when it broke, should be particularly specified.*

2. As regards the permanent way and works :

- i. The fracture of a rail in the permanent way of a passenger railway.
- k. The “bursting” of the permanent way under a train on a passenger railway.
- l. The failure of a bridge, viaduct, or large culvert, or of any part of any of them.
- m. The failure of a tunnel or of any part of it.
- n. The failure of the roof or any important part of a station.
- o. Important slips in cuttings or embankments.
- p. The failure of a revetment wall.
- q. The flooding of a portion of permanent way.
- r. The failure of any other portion of the permanent way or works not included in the above, which leads to an accident to a passenger train.

NOTE.—*In any return of the fracture of a rail it should be stated of what material it was made, with the weight per lineal yard, and whether it had or had not been turned at the time it broke. A diagram showing the section should also be forwarded.*

3. Miscellaneous, such as—

- s. A train travelling in the wrong direction through points on the main line of a passenger railway.
- t. An engine or train running over any horse, beast, or other obstruction, or through the gate or gates of a level crossing on a passenger railway.
- u. Any fire in any part of a train, or at a station, or involving injury to any bridge or viaduct on a passenger railway.

Every notice sent to the Board of Trade in pursuance of the foregoing provisions of the said section shall be in the form hereto annexed or as near thereto as circumstances admit.

Board of Trade,

C. B. ADDERLEY.

14 November, 1874.

34 & 35 Vict.
c. 78.
Order of Board
of Trade.

FORM REFERRED TO IN THE FOREGOING ORDER.

 Railway Company.

RETURN directed to be made to the Board of Trade of Accidents occurring in the course of the Public Traffic, whether attended with personal Injury or not (in compliance with the Regulation of Railways Act, 1871, sect. 6).

Date of Accident	Nature and cause of Accident, and Place where it occurred; and if the Accident happened to a train belonging to a Company other than the Company owning or working the Railway, the name of such Com- pany.	Particu- lars of Damage to Trains or Works.	PARTICULARS OF INJURY TO PERSONS.				REMARKS.
			Name of Person.	Nature of Injury.	Description, stating whether Passenger, Servant of the Com- pany, or of Contractor (if a Servant, specify the class of Service to which he may belong), Persons crossing at Public or Private Level Crossings (specify- ing which) or Trespassers.	Whether Accident occurred from causes beyond the control of the persons injured, or from their own want of Caution or Misconduct.	
							<p>• Copy of Verdict at Coroner's Inquest (if in England, Wales, or Ireland) should be sent to the Board of Trade.</p> <p>• To be transmitted to the Board of Trade, as early as possible, should the verdict not be given before the expiration of the time specified in the Act within which the company is to make the return.</p>

BOARD OF TRADE (RAILWAY DEPARTMENT),
LONDON, S.W., 20th December, 1876.

34 & 35 Vict.
c. 78.
Order of Board
of Trade.

SIR,

I am directed by the Board of Trade to transmit to you the enclosed two Forms of Tables which are proposed to be adopted in future in compiling the returns of broken tyres and axles of engines, carriages, and other vehicles of railway trains. Tables drawn up in this form relating to these matters have been attached to the General Report on Railway Accidents for the year 1875, made to the Board of Trade by Captain Tyler.

As the information compiled, in accordance with these Forms, appears to afford a general view of the nature of the casualties in question, the Board of Trade request that the Directors of your Company will give instructions that the returns relating to these matters may, in future, be made upon similar forms. The information should be supplemented, as has hitherto been done, by a diagram or sketch of the tyres and axles in use, upon which diagram the nature and position of the fracture or split should in each instance be clearly indicated.

The Board of Trade think it may be sufficient if this information is returned upon such forms monthly, except in those cases in which the fracture shall have been attended with or likely to have been attended with loss of life or personal injury, under which circumstances it must be returned without delay.

From an inspection of the returns hitherto received from many of the railway companies, it appears that little or no information has been supplied with regard to these fractures, apparently from some misapprehension as to the information required by the Regulation of Railways Act, and the order of the Board of Trade of the 11th of November, 1874, which requires notice to be sent of every failure of an axle and every failure of a wheel or tyre. Under these circumstances, I am directed by the Board of Trade specially to request that the directors of your Company will give such instructions as will prevent any misapprehension or neglect in future in affording the desired information.

I am to add that the information required must include all failures, whether fractures or splits of tyres or axles of all vehicles, whether such failures are discovered on examination at a station or in sidings, or in sheds or otherwise.

And further, the Board of Trade direct me to request that particular instructions may be given that the information so returned shall include all such failures of tyres or axles, not only of engines, tenders, and of all vehicles belonging to the Company, whether running in passenger, or goods, or mineral trains, but of all vehicles belonging to private owners in use upon, or which may from time to time be brought upon the railway.

I am, sir, your obedient servant,

HENRY G. CALCRAFT.

The Secretary of the

Railway Company.

24 & 25 Vict.
c. 78.
Order of Board
of Trade.

Specimen Form A.

Return of Broken Axles during the Month of . . . , 187 .

NAME OF RAILWAY.	Date of Fracture.	Engine or Tender.	Passenger Vehicle.	Goods or Minerals Vehicle.	Private Owners' Vehicle.	Description of Axle.	Material and Name of Maker.	Position of Fracture.	No. of Diagram.	Letter showing the position of fracture.	At Journal. Inside Boss. Journal of Crank or adjoining Boss. Centre.	Length of Axle.	Nature of Defects (state if fracture showed an old flaw or a brittle or crystallised appearance.	Age and Mileage.	Result of Fracture.	REMARKS. (State in this col- umn where the Fracture was dis- covered, and whe- ther the Vehicle was loaded or empty.)
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Specimen Form B.

Return of Broken Tyres during the Month of _____, 187 .

Name of Railway.	Date of Fracture.	Description of Vehicle, and, if foreign, Name of Owner.				Description of Tyre.				Particulars of Fracture.			Whether the Tyre or Portion of it left the Wheel.	Age of Tyre, and Number of Miles run when known.	Results of Fracture.	Remarks. (State where the Fracture was discovered.)
		Engine or Tender.	Passenger Vehicle.	Goods or Mineral Vehicle.	Private Owners' Vehicles.	Description of Material.	System of Fastening or Name of Patentee.	No. of Diagram or Sketch.	Reference to position of Fracture if Longitudinal.	Original Thickness of Tyre.	Thickness at period of Failure.	Diameter of Wheel.					Whether Fractured Transversely at the Bolt Hole, at the Weld, or otherwise, or Split or Bulged Longitudinally.	No. of Pieces.	Whether showing Honeycombed holes, Flaws, or Cracks.

34 & 35 Vict.
c. 78.
Order of Board
of Trade.

THE PARLIAMENTARY WITNESSES OATHS ACT, 1871.

34 & 35 VICT. c. 83.

**34 & 35 Vict.
c. 83, s. 1.**

An Act for enabling the House of Commons and any Committee thereof to administer Oaths to Witnesses.

[16th August, 1871.]

WHEREAS it is expedient that the House of Commons, and any committee thereof, should respectively have the powers of administering oaths to witnesses :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

**Examination
of witnesses
on oath by the
House of Com-
mons and
committees of
the House.**

1. The House of Commons may administer an oath to the witnesses examined at the bar of the said house.

Any committee of the House of Commons may administer an oath to the witnesses examined before such committee.

Any person examined as aforesaid who wilfully gives false evidence shall be liable to the penalties of perjury.

Where any witness to be examined under this Act conscientiously objects to take an oath, he may make his solemn affirmation and declaration in the words following :

“ I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely, and truly affirm and declare,” &c. :

any solemn affirmation and declaration so made shall be of the same force and effect, and shall entail the same consequences as an oath taken in the usual form.

Any oath or affirmation under this Act may be administered by the speaker of the House of Commons, or by such person or persons as may from time to time be appointed for that purpose either by him or by any standing order or other order of the said House.

2. The first section of the Act of the session of the twenty-first and twenty-second years of her present Majesty, chapter seventy-eight, intituled "An Act to enable the Committees of both Houses of Parliament to administer oaths to witnesses in certain cases," and the third section of the Act of the present session of Parliament, chapter three, intituled "An Act to empower Committees on Bills confirming or giving effect to Provisional Orders to award costs and examine witnesses on oath," shall be repealed :

34 & 35 Vict.
c. 83,
ss. 2—4.

Repeal of
section 1 of
21 & 22 Vict.
c. 78.

Provided that the repeal enacted in this Act shall not affect any penalty, forfeiture, or other punishment incurred in respect of any offence against the sections hereby repealed, or the institution of any legal proceeding, or any other remedy for ascertaining, enforcing, or recovering any such penalty, forfeiture, or punishment as aforesaid.

3. Nothing in this Act contained shall be held to confer any additional or further power or privilege on the Commons House of Parliament with reference to impeachment or other criminal jurisdiction or otherwise howsoever than is herein expressly enacted.

As to additional power
or privilege
of House of
Commons.

4. This Act may be cited as "The Parliamentary Witnesses Oaths Act, 1871."

Short title of
Act.

THE REGULATION OF THE FORCES ACT, 1871.

34 & 35 VICT. c. 86.

**34 & 35 Vict.
c. 86, s. 16.**

*An Act for the better Regulation of the Regular and Auxiliary
Land Forces of the Crown; and for other purposes
relating thereto.* [17th August, 1871.]

Power of
government
on occasion of
emergency to
take posses-
sion of rail-
roads.

16. When her Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State may, by warrant under his hand, empower any person or persons named in such warrant to take possession in the name or on behalf of her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for her Majesty's service at such times and in such manner as the Secretary of State may direct; and the directors, officers and servants of any such railroad shall obey the directions of the Secretary of State as to the user of such railroad or plant as aforesaid for her Majesty's service.

Any warrant granted by the said Secretary of State in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said Secretary of State, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the Secretary of State under this section as may be agreed upon between the said Secretary of State and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by "The Lands Clauses Consolidation Act, 1845."

Where any railroad or plant is taken possession of in the name or on behalf of her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers and servants of such person or body of persons, or between such

person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against her Majesty.

34 & 35 Vict.
c. 36, s. 16.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works or accommodation belonging to or required for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

THE RAILWAY ROLLING STOCK PROTECTION ACT, 1872.

35 & 36 VICT. c. 50.

35 & 36 Vict.
c. 50, ss. 1—3. *An Act to protect Railway Rolling Stock from Distraint
when on hire.* [6th August, 1872.]

WHEREAS it is expedient that protection from distress should in certain cases be extended to rolling stock :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as "The Railway Rolling Stock Protection Act, 1872."

Interpretation
of terms.

2. In this Act—

"Rolling stock" includes waggons, trucks, carriages of all kinds, and locomotive engines used on railways :

"Rent" includes royalty or other reservation in the nature of rent :

"Work" includes any colliery, quarry, mine, manufactory, warehouse, wharf, pier, or jetty, in or on which is any railway siding :

"Tenant" includes a lessee, sub-lessee, or other person having an interest in a work under a lease or agreement, or by use and occupation, or being otherwise liable to pay rent in respect of a work :

"Person" includes a body corporate :

"Court of summary jurisdiction" means any justices of the peace, metropolitan police magistrate, stipendiary magistrate, sheriff, sheriff substitute, or other magistrate or officer, by whatever name called, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

Rolling stock
protected
from distress
or sale in cer-
tain cases.

3. Rolling stock being in a work shall not be liable to distress for rent payable by a tenant of the work, if such rolling stock is not the actual property of such tenant, and has upon it a distinguishing metal plate affixed to a conspicuous part thereof, or a distinguishing brand or other mark conspicuously impressed or made thereon, sufficiently indicating the actual owner thereof.

A work in this section means any establishment or place used for the purpose of trade or manufacture which is connected with a line of railway by sidings.

An engine hired by a contractor and placed in a shed connected by a siding with a railway is protected from distress under this section (*Easton Estate & Mining Co. v. Western Wagon Property Co.*, 54 L. T. 735). 35 & 36 Vict. c. 50, ss. 4—7.

4. Where any such rolling stock as aforesaid is distrained, a court of summary jurisdiction may make against the landlord such summary order for restoration of the rolling stock or for payment of the real value thereof, and respecting costs or otherwise, and may make against the person distraining such order in the matter, and respecting costs, as to the court seems just. Remedy in case distress proceeded with.

5. This Act shall not extend to protect from distress the interest which any tenant may have in any rolling stock otherwise protected under this Act, but such interest may be distrained upon by the landlord and disposed of in the same manner as the whole interest of such tenant, if he had possessed the same; and in case of disagreement between the landlord and the parties claiming such rolling stock as to the mode of disposing of such interest, the same shall be settled by the court of summary jurisdiction; and the court shall, on the application of either party, make such order therein as to the court shall seem fit. Not to extend to protect tenant's interest in rolling stock.

6. If any party thinks himself aggrieved by any order or adjudication of a court of summary jurisdiction under this Act, or by dismissal of his complaint by any such court, he may appeal therefrom, subject to the conditions and regulations following; (that is to say,) Appeal to quarter sessions.

- (1.) The appeal shall be made to some court of general or quarter sessions *for the county or place in which the cause of appeal arises holden not less than fifteen days, and (unless adjourned by the court of appeal) not more than four months after the decision of the court of summary jurisdiction : * This section, from the words "for the county" to the end of the section, is repealed as regards England by 47 & 48 Vict. c. 43.
- (2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and the ground thereof :
- (3.) The appellant shall immediately after such notice enter into a recognisance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security, by deposit of money or otherwise, as the justice thinks fit to allow.

7. No order or conviction of a court of summary jurisdiction under this Act shall be quashed for want of form, or be removed by certiorari or otherwise (at the instance either of the Crown or of any private party) into any superior court. Exclusion of certiorari.

See the notes to section 145 of the Lands Clauses Act, 1845, *ante*.

THE REGULATION OF RAILWAYS ACT, 1873 (a).

36 & 37 VICT. c. 48.

36 & 37 Vict.
c. 48, ss. 1—3.

An Act to make better provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith (b). [21st July, 1873.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title. 1. This Act may be cited as "The Regulation of Railways Act, 1873."

**Commence-
ment of Act.** 2. This Act shall, except as herein is otherwise expressly provided, come into operation on the first day of September, one thousand eight hundred and seventy-three, which date is in this Act referred to as the commencement of this Act.

Definitions. 3. In this Act—
 The term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament :
 The term "canal company" includes any person being the owner or lessee of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom constructed or carried on under the powers of any Act of Parliament :
 The term "person" includes a body of persons corporate or unincorporate :
 The term "railway" includes every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic :

(a) This Act and the Regulation of Railways Act, 1874 (37 & 38 Vict. c. 40), were continued in force until the 31st December, 1882, by the 42 & 43 Vict. c. 56.

(b) This Act was founded on the Report of the Joint Select Committee on Railway Amalgamation, 1872.

- The term "canal" includes any navigation which has been made under or upon which tolls may be levied by authority of Parliament, and also the wharves and landing-places of and belonging to such canal or navigation, and used for the purposes of public traffic: 36 & 37 Vict.
c. 48, ss. 4, 5.
- The term "traffic" includes not only passengers and their luggage, goods, animals and other things conveyed by any railway company or canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company:
- The term "mails" includes mail bags and post-letter bags:
- The term "special Act" means a local or local and personal Act, or an Act of a local and personal nature, and includes a provisional order of the Board of Trade confirmed by Act of Parliament, and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864:
- The term "the Treasury" means the commissioners of her Majesty's treasury for the time being:
- The term "superior court" means in England any of her Majesty's superior courts at Westminster, in Ireland any of her Majesty's superior courts at Dublin, and in Scotland the Court of Session.

Appointment and duties of Railway Commissioners.

4. For the purpose of carrying into effect the provisions of the Railway and Canal Traffic Act, 1854, and of this Act, it shall be lawful for her Majesty, at any time after the passing of this Act, by warrant under the royal sign manual, to appoint not more than three commissioners, of whom one shall be of experience in the law and one of experience in railway business, and not more than two assistant commissioners, and upon the occurrence of any vacancy in the office of any such commissioner or assistant commissioner from time to time in like manner to appoint some fit person to fill the vacancy. It shall be lawful for the Lord Chancellor, if he think fit, to remove for inability or misbehaviour any commissioner appointed in pursuance of this Act. Appointment
of Railway
Commis-
sioners.

The three commissioners appointed under this Act (and in this Act referred to as the commissioners) shall be styled the railway commissioners, and shall have an official seal which shall be judicially noticed. They may act notwithstanding any vacancy in their number. The said assistant commissioners shall hold office during the pleasure of her Majesty.

5. Any person appointed a commissioner under this Act shall within three calendar months after his appointment absolutely sell and dispose of any stock, share, debenture stock, debenture bond, or other security of any railway or canal company in the United Kingdom which he shall at the time of his appointment Commis-
sioners not to
be interested
in railway or
canal stock.

36 & 37 Vict.
c. 48, s. 6.

own or be interested in for his own benefit; and it shall not be lawful for any person appointed a commissioner under this Act, so long as he shall hold office as such commissioner, to purchase, take, or become interested in for his own benefit any such stock, share, debenture stock, debenture bond, or other security; and if any such stock, share, debenture stock, debenture bond, or other security, or any interest therein, shall come to or vest in such commissioner by will or succession, for his own benefit, he shall within three calendar months after the same shall so come to or vest in him absolutely sell and dispose of the same or his interest therein.

It shall not be lawful for the commissioners, except by consent of the parties to the proceedings, to exercise any jurisdiction by this Act conferred upon them in any case in which they shall be, directly or indirectly, interested in the matter in question.

The commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with this provision.

Transfer to
Commissioners of
jurisdiction
under
17 & 18 Vict.
c. 31, s. 3.

6. Any person complaining of anything done or of any omission made in violation or contravention of section two of the Railway and Canal Traffic Act, 1854 (*a*), or of section sixteen of the Regulation of Railways Act, 1868 (*b*), or of this Act, or of any enactment amending or applying the said enactments respectively, may apply to the commissioners, and upon the certificate of the Board of Trade alleging any such violation or contravention any person appointed by the Board of Trade (*c*), in that behalf may in like manner apply to the commissioners; and for the purpose of enabling the commissioners to hear and determine the matter of any such complaint, they shall have and may exercise all the jurisdiction conferred by section three of the Railway and Canal Traffic Act, 1854, on the several courts and judges empowered to hear and determine complaints under that Act; and may make orders of like nature with the writs and orders authorised to be issued and made by the said courts and judges (*d*); and the said courts and judges shall, except for the purpose of enforcing any decision or order of the commissioners, cease to exercise the jurisdiction conferred on them by that section.

(*a*) For the cases decided under the Railway and Canal Traffic Act, see *ante*, p. 586.

(*b*) 31 & 32 Vict. c. 119, *ante*. The section referred to provides for the equal treatment of the public by railway companies working steam vessels.

(*c*) The Board of Trade have not, up to the present time, appointed any person to apply to the railway commissioners in cases where there has been a violation or contravention of the enactments referred to in this section.

Commis-
sioners may
issue writ of
attachment
and make
order for pay-
ment of
penalty.

(*d*) The jurisdiction of the railway commissioners is, in the view of the railway commissioners, not limited to "hearing and determining" the matter of any complaint, but they may make orders of a like nature with those which were competent to the courts and judges who administered the Railway and Canal Traffic Act, 1854. There is, therefore, nothing to prevent them dealing with a case of disobedience to a writ of injunction by issuing a writ of attachment or making an order for the payment of a penalty (*Toomer v. L. C. & D. and S. E. Ry. Cos.*, 3 N. & Mac. 79 and 82. See 2 Ex. D. 450; *Chatterley Iron Co. Limited v. North Staffordshire Ry. Co.*, 3 N. & Mac. 238).

Where an order in excess of their jurisdiction has been made by the railway commissioners, a prohibition may issue from the High Court of Justice against the commissioners, restraining them from enforcing such order (*Toomer v. L. C. & D. & S. E. Ry. Cos.*, 3 N. & Mac. 79; 2 Ex. D. 450; *S. E. Ry. Co. v. The Railway Commissioners and the Corporation of Hastings*, 5 Q. B. D. 217).

The Court of Session in Scotland have a similar power as regards a case affecting a Scotch railway, notwithstanding the limitation of review contained in section 28 of this Act (*Greenock and Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 3 N. & Mac. 145; 5 Sc. Sess. Ca. (4th ser.) 995).

If the railway commissioners issue an order which they have no power to issue, prohibition will lie, notwithstanding the power of the Court of Common Pleas over railways under 17 & 18 Vict. c. 31, was transferred to the commissioners by 36 & 37 Vict. c. 48 (*S. E. Ry. Co. v. Railway Commissioners and Corporation of Hastings*, 3 N. & Mac. 464).

36 & 37 Vict.
c. 48, ss. 7, 8.

Difference to be referred under the Arbitration Act, 1859, is a difference authorised to be referred within this section.

7. Where the commissioners have received any complaint alleging the infringement by a railway company or canal company of the provisions of any enactment in respect of which the commissioners have jurisdiction, they may, if they think fit, before requiring or permitting any formal proceedings to be taken on such complaint, communicate the same to the company against whom it is made, so as to afford them an opportunity of making such observations thereon as they may think fit.

Power for commissioners to enable companies to explain alleged violation of law.

8. Where any difference between railway companies or between canal companies, or between a railway company and a canal company, is, under the provisions of any general or special Act, passed either before or after the passing of this Act, required or authorised to be referred to arbitration, such difference shall at the instance of any company party to the difference, and with the consent of the commissioners, be referred to the commissioners for their decision in lieu of being referred to arbitration. Provided that the power of compelling a reference to the commissioners in this section contained shall not apply to any case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which, a standing arbitrator having been appointed under any general or special Act, the commissioners are of opinion that the difference in question may more conveniently be referred to him.

Differences between railway and canal companies to be referred to commissioners.

Where an agreement provided, that differences between two railway companies should be referred to arbitration under the Railway Companies Arbitration Act, 1859, and the agreement was afterwards scheduled to a private Act and confirmed, it was held that the railway commissioners had no jurisdiction to determine the question in dispute under this section (*R. v. Midland Ry. Co.*, 19 Q. B. D. 540. See *Stokes Bay Ry. & Pier Co. v. London & S. W. Ry. Co.*, 2 N. & Mac. 143).

In the absence of an agreement under the Railway Companies Arbitration Act, 1859, that Act would not be an authorising Act within the meaning of this section (*Torbay & Brizham Ry. Co. v. South Devon Ry. Co.*, 2 N. & Mac. 391).

Where two railway companies had, in a working agreement under which the line of the one was to be worked by the other, agreed that any dispute as to the carrying out of the provisions of that agreement, should from time to time as the same might arise, be referred to arbitration in the manner provided by the Railway Companies Consolidation (Scotland) Act, 1845, with reference to the settlement of disputes by arbitration, it was held that as the working agreement was authorised under a special Act, the difference was, under the provisions of a special Act, authorised to be referred to arbitration. And also that it might be said that the working agreement was a writing within the meaning of the Railway Companies

Agreement to refer confirmed by private Act.

26 & 27 Vict.
c. 48,
ss. 9, 10.

Arbitration Act, 1859, and that that general Act might thus have authorised the reference of the dispute to arbitration (*Portpatrick Ry. Co. v. Caledonian Ry. Co.*, 3 N. & Mac. 189. See, however, *R. v. Midland Ry. Co.*, 19 Q. B. D. 540).

A considerable number of cases have been referred to the commissioners under this section for their decision; these will be found reported in Neville and Macnamara's Reports.

A reference to arbitration in an agreement which is authorised by an Act of Parliament is not a reference to arbitration by or under the provisions of any general or special Act of Parliament (*Waterford & Limerick Ry. Co. v. Gt. W. Ry. Co.*, 17 Ch. D. 493; 3 N. & Mac. 546).

Where a special Act enacted that "the heads of agreement which are set forth in the schedule to this Act are hereby confirmed and made binding on the companies" parties to the agreement, and the agreement stated that all differences "should be determined by arbitration under the Railway Companies Arbitration Act, 1859," the railway commissioners held that they had jurisdiction under this section to hear and determine a matter in dispute under the agreement. The Queen's Bench Division, Smith, J. (*Grove, J., dubitante*), held that the section did not make the provisions of the agreement "provisions of any general or special Act," and that consequently the commissioners had no jurisdiction (*Halesowen Ry. Co. v. Gt. W. & Midland Ry. Cos.*, 4 B. & Mac. 224; see also *Bedford & Northampton Ry. Co. v. Midland Ry. Co.*, 4 B. & Mac. 170).

Where an agreement to work a railway "so as properly to develop and accommodate not only the through, but also the local, traffic of the district" contained a clause "that in case of difference, the matter should be referred to arbitration under the Railway Companies Arbitration Act, 1859," and the agreement was by a subsequent Act of Parliament incorporated and made to form part of the Act, the commissioners entertained an application under the agreement (*Eastern & Midland Ry. Co. v. Midland Ry. Co.*, 4 B. & Mac. 323).

Power to refer
differences to
commissioners.

9. Any difference to which a railway company or canal company is a party, may, on the application of the parties to the difference, and with the assent of the commissioners, be referred to them for their decision.

Some important rating cases have been referred to the commissioners under this section for their decision (*Manchester, Sheffield & Lincolnshire Ry. Co. & Trent Ancholm & Gt. Grimsby Ry. Co. v. Guardians of the Poor of Caistor Union*; *Same v. Guardians of the Poor of Glandford Brigg Union*, 2 N. & Mac. 53; *L. & N. W. Ry. Co. v. Guardians of the Poor of Wigan Union*, 2 N. & Mac. 240).

Transfer to
commissioners of
certain powers
and duties of
the Board of
Trade.
26 & 27 Vict.
c. 92.

10. The following powers and duties of the Board of Trade shall be transferred to the commissioners; namely,

- (1.) The powers of the Board of Trade under Part III. of the Railway Clauses Act, 1863 (a), or under any special Act, with respect to the approval of working agreements between railway companies (b); and,
- (2.) The powers and duties of the Board of Trade under section thirty-five of the Railway Clauses Act 1863 (c), with respect to the exercise by railway companies of their powers in relation to steam vessels:

And the provisions of the said Acts conferring such powers or imposing such duties, or otherwise referring to such powers or duties, shall, so far as is consistent with the tenor thereof, be read as if the commissioners were therein named instead of the Board of Trade.

(a) 26 & 27 Vict. c. 92, ss. 22—29. See *ante*, pp. 465—467.

(b) The commissioners have power to revise working agreements, that authority being involved in the power given by this section to approve (*Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 132).

The powers of the Board of Trade transferred include the power of revision and modification under sect. 27 of the Railway Clauses Act, 1863 (*Huddersfield Corporation v. Gt. N. & M. S. & L. Ry. Cos.*, 3 N. & Mac. 564).

36 & 37 Vict.
c. 48, s. 11.

Where two companies entered into an agreement containing a clause that "neither company should make any bargain, treaty, agreement or arrangement with any other company, or do any other act, directly or indirectly, to affect injuriously the traffic of the other company, or to prejudice the agreement without the consent of the other company," and there was an application to revise the agreement in the interests of the public, the commissioners modified the agreement by omitting the clause in question, or in the alternative by adding a proviso which rendered it inoperative (*Huddersfield v. Gt. N. & M. S. & L. Ry. Cos.*, 4 B. & Mac. 44).

(c) 26 & 27 Vict. c. 92, s. 35 (see *ante*, p. 469), provides for the cesser of railway company's powers over steam vessels on the report of the Board of Trade.

Explanation and Amendment of Law.

11. Whereas by section two of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal or railway and canal communication, or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference of advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals of the several companies be at all times afforded to the public in that behalf.

Explanation
of 17 & 18
Vict. c. 31, s. 2,
as to through
traffic.

And whereas it is expedient to explain and amend the said enactment: Be it therefore enacted, that—

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding and delivering by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls (a) or fares (in this Act referred to as through rates).

36 & 37 Vict.
c. 48, s. 11.

Provided as follows :—

- (1.) The company requiring the traffic to be forwarded (*b*) shall give written notice of the proposed through rate to each forwarding company, stating both its amount and its apportionment, and the route (*c*) by which the traffic is proposed to be forwarded :
- (2.) Each forwarding company (*d*) shall, within the prescribed period after the receipt of such notice, by written notice inform the company requiring the traffic to be forwarded whether they agree to the rate and route ; and, if they object to either, the grounds of the objection :
- (3.) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration :
- (4.) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the commissioners for their decision :
- (5.) If an objection be made to the granting of the rate or to the route, the commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route (*e*), and shall allow or refuse the rate accordingly :
- (6.) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the commissioners as to its apportionment shall be retrospective ; in any other case the operation of the rate shall be suspended until the decision is given :
- (7.) The commissioners in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route (*f*), or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof :
- (8.) It shall not be lawful for the commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route (*g*) :
- (9.) The prescribed period mentioned in this section shall be ten days, or such longer period as the commissioners may from time to time by general order prescribe.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section

shall extend to such steam vessels, and to the traffic carried thereby (h).

36 & 37 Vict.
c. 42, s. 11.

(a) The word "tolls" includes the tolls which are levied for the use of a canal, and the terms "to forward," and "to afford facilities for forwarding," have been held to mean the same thing (*Warwick & Birmingham and Warwick & Napton Canal Navigation Cos. v. Birmingham Canal Co. and others*, 3 N. & Mac. 113).

The railway commissioners have power to grant a through toll without annexing to it a through rate (ib.).

(b) The right to apply for through rates under this section is not confined to companies owning lines at the two ends of the through route, but extends to intermediate companies. Where, however, an intermediate company whose traffic was worked by one of the terminal companies had agreed that rates for through traffic should be fixed by the working company, they were not the proper parties to apply (*Central Wales and Carmarthen Junction Ry. Co. v. Gt. W. Ry. Co.*, 2 N. & Mac. 191).

Intermediate companies in route may apply.

The company requiring traffic to be forwarded at through rates under this section need not themselves be a forwarding company as regards the particular traffic, but it is enough if they are interested in the forwarding (*Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 227; 5 Sc. Sess. Ca. 4th Series, 995; affirmed by Court of Sess. 3 N. & Mac. 145).

A company interested in the forwarding.

Where a railway company had entered into an agreement with another railway company, whereby the latter were to work the line, and it was agreed that the rates and fares to be charged on the first company's line should be fixed by a joint committee of the two companies, it was decided that this agreement did not relate to through rates, and that the owning company were the proper parties to apply for such rates under the above section (*Greenock & Wemyss Bay Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 227).

A joint committee for fixing local rates.

Where applicants for through rates had no rolling stock, and did not work their railway, but maintained and managed the line, and collected, forwarded, and delivered their own traffic, and employed the staff at their own stations, it was decided by the Queen's Bench Division that the traffic required to be forwarded "was through traffic to and from" the applicants' railway, and that they were a railway company entitled to apply for through rates within this section (*Central Wales, &c. Ry. Co. and Mid Wales Ry. Co. v. Gt. W., L. & N. W., Midland, and Pembroke and Tisbury Ry. Cos.*, 4 B. & Mac. 110).

The commissioners refused to allow a through rate higher than the rate which had, under the influence of competition, existed for ten years, when the competition ceased by the competing line coming into the hands of the applicant company, because the interests of the public would be affected (*Gt. N. Ry. Co. (Ireland) v. Belfast Central Ry. Co.*, 3 N. & Mac. 411).

Rate refused.

The existence of through rates for the conveyance of traffic in company's waggons will not prevent a railway company applying under this section for different through rates for similar traffic when conveyed in owner's waggons (*Newry & Armagh Ry. Co. v. Gt. N. (of Ireland) Ry. Co.*, 3 N. & Mac. 28).

Application where through rate exists.

This section applies not only to mileage tolls or tolls granted as maximum tolls, but also to gross tolls, and any special charges which the company may be entitled to make (*Warwick & Birmingham and Warwick & Napton Canal Navigation Cos. v. Birmingham Canal Navigation Cos. and others*, 3 N. & Mac. 113).

Section applies to all tolls.

The consent of a railway company which had guaranteed a canal company's dividend under statute, which provided that they should not reduce or vary their tolls without the railway company's consent, was required in an application to grant through tolls affecting the tolls of the canal company, and the railway commissioners cannot, in the absence of the guaranteeing company, allow the through rates (*The Warwick & Birmingham Canal Co. and another v. The Birmingham Canal Co. and others; Warwick Canal Co. v. Birmingham Canal Co.*, 5 Ex. D. 1, S. C. sub nom. *Ex parte The Birmingham Canal Co. and the L. & N. W. Ry. Co.*, 3 N. & Mac. 324).

Consent of guaranteeing company to reduction of tolls for through traffic.

But where a railway company was apprehensive that a reduction of the rates by the shorter of two routes would entail a similar reduction of rates by the longer route, and would render the traffic carried by the latter unprofitable, it was held, that that was not a reason for maintaining the rates by the shorter route above their natural and proper level, and a reduced rate proposed over the shorter route was allowed conditionally by the commissioners (*E. & W. Junction Ry. Co. v. Gt. W. Ry. Co.*, 2 N. & Mac. 147).

Rate allowed conditionally.

A harbour board cannot apply for through rates under this section (*Ayr Harbour Trustees and P. Barr & Co. v. G. & S. W., Caledonian and other Ry. Cos.*, 4 B. & Mac. 81).

When a through rate is asked for by a shorter route than a competitive route on which through rates do exist, the facts that the quantity of traffic to which the

36 & 37 Vict.
c. 48, s. 11.

proposed rate would apply would be small, that no time would be saved, and that the number of exchanges on a portion of through route would be great, are not reasons for refusing the rate (*Central Wales, &c. Ry. Co. v. L. & N. W. and Gt. W. Ry. Cos.*, 4 B. & Mac. 211).

It is not a valid objection to a proposed through rate that it is not sufficiently paying, if the earnings per truck are not less than the earnings in other trucks of a goods train, and if the company's profit on coal (the subject of the proposed rate), is not less than their profit on their goods traffic generally (*Belfast Central Ry. Co. v. Gt. N. Ry. Co. (Ireland)*, 4 B. & Mac. 159).

In applications under this section there is no *prima facie* case in favour of specially low charges, and the company applying for the through rate must show why the forwarding company should carry for less than it would be likely to receive out of an agreed through rate (*ib.*).

There must be evidence that a proposed through rate is required in the public interest (*ib.*).

One of the objects of this section is to prevent rates being raised merely as a consequence of amalgamation, so far as that can be done by regulating the charges on through traffic, and to make railway companies adjust their rates with a view to the interests of other companies (*Gt. N. Ry. Co. (Ireland) v. Belfast Central Ry. Co.*, 3 N. & Mac. 411).

Where the commissioners have fixed a through rate to a certain place, every member of the public has a vested right to have his traffic carried to that place for the rate so fixed. If a through rate is asked to a place beyond, the question whether it is reasonable or not in the interests of the public, depends upon whether the extra amount of such rate affords a reasonable remuneration for the haulage for the extra distance where the extra distance involves no other expense (*Belfast Central Ry. Co. v. Gt. N. Ry. Co. (Ireland)* (No. 2), 3 N. & M. 419).

The commissioners will not grant through rates which will raise long-established rates and unsettle interests which have been founded on their continuance, unless the alteration is necessary, that the company may have a fair return on the traffic carried (*Gt. N. Ry. Co. (Ireland) v. Belfast Central Ry. Co.*, 3 N. & Mac. 411).

A "route."

(e) A "route" within the meaning of this section is a route from the station on the sending line where the traffic arises, to the station on the forwarding line where such traffic is delivered (*E. & W. Junction Ry. Co. v. Gt. W. Ry. Co.*, 1 N. & Mac. 331).

A route which would be reasonable if worked throughout by one railway company, does not become "unreasonable" because two or more companies are concerned in working it (*Swindon and Marlboro' Ry. Co. v. Gt. W. and L. & S. W. Ry. Cos.*, 4 B. & Mac. 349).

Where a line formed part of an alternative route between certain places, and equal rates were proposed over that route to those existing over the competitive route, although time and distance would be saved in the proposed route, and there would be no saving in the number of transfers at junctions, the commissioners allowed the rates and held the route to be reasonable, as an alternative route at equal rates was, under the circumstances, in the interests of the public (*ib.*).

Non-carrying
company a
forwarding
company.

(d) A company may be a forwarding company without acting as the carriers of the traffic they forward (*Warwick & Birmingham and Warwick and Napton Canal Navigation Co. v. Birmingham Canal Co. and others*, 3 N. & Mac. 113).

A reasonable
route.

(e) A sending company having two alternative routes for through traffic, one eight miles longer than the other, proposed for the purpose of a through rate, to carry by the longer one at a double cost and labour in working and maintaining the junctions, with the object of making their own mileage more, and the mileage of the forwarding company less; but the commissioners decided that the longer route was not a reasonable route within the meaning of the section (*E. & W. Junction Ry. Co. v. Gt. W. Ry. Co.*, 1 N. & Mac. 33).

Unequal proportions of
rival company's lines
does not make route unreasonable.
Special expenses.

That a route combines unequal proportions of two rival companies' lines, or that the junction for interchange of the traffic has been chosen so near to its destination that the traffic has naturally run its course before it is handed over to the delivering company, are not grounds for holding that a route is an unreasonable one (*Caledonian Ry. Co. v. North British Ry. Co.* (No. 4), 3 N. & Mac. 403).

Mileage rates.

(f) The expense incurred in acquiring a railway and in executing works which will give an improved access to certain stations are works of an exceptional character as to cost, and will be considered by the commissioners in apportioning the through rates (*ib.*).

(g) The mileage rates in this sub section must be mileage rates for a line having the same termini as the through route, and must be charged in respect of goods carried over it for its whole length (*Warwick & Birmingham and Warwick & Napton Canal Navigation Cos. v. Birmingham Canal Co. and others*, 3 N. & Mac. 113).

Where there is a statutory agreement between two companies over whose railways rates, not in accordance with the terms of the agreement, are proposed by one of them, the commissioners are unable to allow such rates (*N. Monkland Ry. Co. v. N. British Ry. Co.*, 3 N. & Mac. 282).

36 & 37 Vict.
c. 48,
ss. 12-14.

(A) As to what constitutes an arrangement for using, maintaining, or working steam vessels within the meaning of this section, see *Belfast Central Ry. Co. v. Gt. N. Ry. Co. (Ir.)* (No. 4), 4 B. & Mac. 379.

Statutory agreement will prevent commissioners allowing through rates.

Where a railway company applying for through rates had agreed with a steamboat proprietor for the carriage of passengers by his steamers, in connection with their line, it was decided that such steamer and the traffic carried thereby were within the provisions of this section (*Greenock and Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 227).

That there are through bookings between two places over a route partly of railway and partly of sea, by steam-vessels, is not an arrangement for the use of these, so as to make this section apply and enable the owners to demand through rates (*Ayr Harbour Trustees and others v. Gt. & S. W. Ry. and other Cos.*, 4 B. & Mac. 81).

An arrangement for steam vessels.

An agreement between a railway company and the owner of a steamboat to satisfy the section must be definite, and contain an obligation on the part of the latter to ply between the specified ports (*Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.* (No. 2), 4 B. & Mac. 70).

The last clause in this section extends the whole provisions of the section, and takes effect whenever there is an arrangement with the proprietors of steam vessels for the conveyance of passengers or goods to and from any port or town with which there is railway communication, provided the railway company party to the arrangement owned or worked, or were otherwise immediately interested in some portion or other of the railways forming the through route (*Caledonian Ry. Co. and others v. Greenock and Wemyss Bay Ry. Co. and others*, 4 B. & Mac. 135).

12. Subject to the provisions in the last preceding section contained, the commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

Powers of commissioners as to through rates.

Tolls in the nature of "junction tolls" or "gross tolls" will not be respected under this section more than the maximum rates referred to (*Warwick & Birmingham and Warwick & Napton Canal Navigation Cos. v. Birmingham Canal Co. and others*, 3 N. & Mac. 113).

Gross or junction tolls.

13. A complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by this Act, may be made to the commissioners by a municipal or other public corporation, local or harbour board, without proof that the complainants are aggrieved by the contravention: Provided that a complaint shall not be entertained by the commissioners in pursuance of this section unless such complaint is accompanied by a certificate of the Board of Trade to the effect that in their opinion the case in respect of which the complaint is made is a proper one to be submitted for adjudication to the commissioners by such municipal or other public corporation, local or harbour board.

Provision for complaints by public authority in certain cases.

The power of municipal or other public corporations to apply to the commissioners is not limited to cases in which the second section of the Railway and Canal Traffic Act, 1854, is contravened (*Uckfield Local Board v. L. & B. and S. E. Ry. Cos.*, 2 N. & Mac. 214).

Application by local authorities.

14. Every railway company and canal company shall keep at each of their stations (a) and wharves a book or books showing

Publication of rates.

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c. 48, s. 14.

every rate for the time being charged for the carriage of traffic, other than passengers and their luggage (*b*), from that station or wharf to any place to which they book (*c*), including any rates charged under any special contract, and stating the distance from that station or wharf of every station, wharf, siding, or place to which any such rate is charged.

Every such book shall during all reasonable hours be open to the inspection of any person without the payment of any fee (*d*).

The commissioners may from time to time, on the application of any person interested, make orders with respect to any particular description of traffic, requiring a railway company or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, including therein tolls for the use of the railway or canal, for the use of carriages or vessels, or for locomotive power, and how much is for other expenses, specifying the nature and detail of such other expenses (*e*).

Any company failing to comply with the provisions of this section shall for each offence, and in the case of a continuing offence, for every day during which the offence continues, be liable to a penalty not exceeding five pounds, and such penalty shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845 (as the case may require), are for the time being recoverable and applicable.

"Station."

(*a*) A "station" within the meaning of this section is a place from which a rate is charged. A railway company is bound to keep the books required by this section at sidings from which coal is conveyed, if these sidings are accessible to the public; or, for the greater convenience of the company and the public, at the station where the general merchandise traffic of the district is conducted (*Harborne Ry. Co. v. L. & N. W. Ry. Co.*, 2 N. & Mac. 169).

Books must be kept at stations where rates are charged, not where they are booked.

Where the mineral traffic from local stations was charged for and booked at central stations where rate books were kept, but no mineral rates were kept at any other station, this practice was held to be a contravention of this section, and that the obligation to keep books of rates at stations from which rates are charged attaches equally, whether the booking is done there or elsewhere (*Jones v. N. E. Ry. Co.*, 2 N. & Mac. 208).

Through and local rates to be shown.

These books of rates must show all rates, local as well as through, which are being charged from the station where the book is kept; but through rates need not be shown, in whole or in part, at any other station than the one from which the traffic carried at through rates is forwarded in the first instance (*Oxlade v. N. E. Ry. Co.*, 3 N. & Mac. 35).

Through rate, portion of.

This section does not require a railway company to show how the through rates quoted by it are divided between the various railway companies running the traffic (*Watkinson v. Wrexham, Mold, &c. Ry. Co.* (No. 3), 3 N. & Mac. 446).

Costs for refusing to show books.

A railway company which refuses to show their rate books will have to pay the costs of proceedings which parties had "reasonable and probable cause" for taking (*Clonmel Traders and Southern Ry. Co. v. Waterford and Limerick Ry. Co.*, 4 B. & Mac. 92).

Passenger fares, publication of.

If the information as to how a rate is made up is withheld the commissioners will, on application under this section, order it to be given, and to be made public by proper entries in the rate-book. They will also order the railway company to pay the costs (*Cairns v. N. E. Ry. Co.*, 4 B. & Mac. 221).

"To which they book."

(*b*) The publication of passengers' fares is provided for by the Railways Regulation Act, 1868 (31 & 32 Vict. c. 119, s. 15).

(*c*) The words "to which they book," mean to which they quote a rate (*Jones v. N. E. Ry. Co.*, 2 N. & Mac. 208).

(d) It has been decided that the commissioners have jurisdiction to order an inspection, although justices have the power to inflict a penalty for refusal to allow such inspection, and that the right given by this section was general, and that it was immaterial what motive or object the person had who desired to inspect; that inspection under the statute included the right of taking extracts or copies, and that at all events the court had power to order that extracts and copies might be taken as auxiliary to the right of inspection, and in order to make such right effectual (*Perkins v. L. & N. W. Ry. Co.*, 1 Nev. & Mac. 327).

36 & 37 Vict.
c. 48, s. 15.

Power to order inspection.
Extracts and copies.

(e) See also the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119, s. 17).

The words "specifying the nature and detail of such other expenses" require a railway company to state what terminal charges they undertake to perform with regard to the particular traffic, and how much they charge for each of such services. A railway company does not sufficiently comply with the section by giving a list of services they perform and their total charge (*Colman v. Gt. E. Ry. Co.*, 4 B. & Mac. 108).

An applicant under this section will not become disentitled to an order to distinguish how a rate is made up, by the railway company withdrawing the rates after the application has been made (*Berry v. L. C. and Dover Ry. Co.*, 4 B. & Mac. 310).

Where in answer to an application under this part of the section a railway company said that the rates charged were mileage rates within their parliamentary powers, and were not made up of separate sums, an order to distinguish was still made, on the ground that it did not follow that the whole of each rate was for conveyance only, and that part was not for other expenses (*Jones v. N. E. Ry. Co.*, 2 N. & Mac. 208. See also *Bailey v. L. C. & D. Ry. Co.*, 2 N. & Mac. 99; *Chatterley Iron Co. v. N. Staffordshire Ry. Co.*, 3 N. & Mac. 238).

Order to distinguish mileage rate.

But where, on a similar application, it was proved in evidence that nothing was included in the rate except the carriage on the railway, the order was refused (*Robertson v. Midland Gt. Western Ry. Co. (Ireland)*, 2 N. & Mac. 409).

Order refused where nothing but carriage on railway included.

The commissioners have no power under this section to order a company to distinguish the respective parts of a through rate paid over to the respective forwarding companies (*Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co. (No. 2)*, 3 N. & Mac. 446).

15. The commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering collection, delivery, and other services of a like nature; any decision of the commissioners under this section shall be binding on all courts and in all legal proceedings whatsoever.

Power to commissioners to fix terminal charges.

Where under a special Act the directors were empowered to make a certain maximum charge for conveyance of coal along their line, including tolls for the use of waggons, &c., "and every expense incidental to such conveyance except a reasonable sum for loading, covering, unloading of goods, and delivery and collection, and any other services incidental to the business of a carrier." They were also authorised to make increased charges by agreement in respect of any other special services performed by them; while by another clause in the special Act the company were to "provide sufficient locomotive powers where and as the same should be required, and as soon as an adequate and sufficient load should be in readiness." The company sought to charge a colliery owner for taking his waggons to and from the siding belonging to him. It appeared, however, that whatever particular difficulty arose in this work was occasioned by the position of the points effecting the junction of the line with the sidings. The railway company also sought to make a charge in respect of their allowing the coals of a colliery owner to be left on the ground adjoining their line. It was held that neither of these services were "services incidental to the business of a carrier," within the meaning of the Act, and that the second mentioned charge being for a service which was an advantage of the colliery owner, might have been made the subject of agreement. The company having refused to convey the colliery owner's coals unless he had ready fifteen waggons containing a minimum load of four tons in each wagon, while they carried the coals of others in smaller quantities, this

Services incidental to the business of a carrier.

36 & 37 Vict.
c. 48, s. 15.

restriction was held to be unreasonable, and not to be warranted by the Act (*Lancashire & Yorkshire Ry. Co. v. Gidlow*, L. R. 7 E. & Ir. App. 617; 45 L. J. (H. L.) Exch. 623).

Under a somewhat similar clause which authorised the company to take increased charges by agreement they were held justified in agreeing for the carriage of coal at a rate higher than the maximum mentioned in their Act, although no special services were involved in the conveyance of the traffic (*Wrexham Ry. Co. v. Little Mountain Colliery Co.*, 38 L. T. N. S. 290).

"Marshalling" incidental to conveyance.

In a case where a railway company were authorised to charge for conveyance, and everything incidental to conveyance, a certain sum per ton per mile, and also a reasonable sum for certain terminal and extraordinary services, viz., "loading, covering, and unloading of goods, delivery and collection, and any other services incidental to the business or duty of a carrier, where such services, or any of them, are or is performed by the company, and warehousing and wharfage of goods, or any other extraordinary services performed by the company," it was held haulage and shunting in marshalling the traffic from collieries were services incidental to conveyance, and that back haulage of empty waggons was not a service for which a charge could be made under the clause quoted (*Dunkirk Colliery Co. v. Manchester, Sheffield & Lincolnshire Ry. Co.*, 2 N. & Mac. 402).

Extraordinary services.

Providing and maintaining and working signalling and interlocking apparatus at a junction with a colliery siding, is an extraordinary service within that clause, because it was a service performed for the benefit of the colliery owner, and one from which the public using the railway derived no benefit. In that case the railway commissioners decided that threepence per ton was a reasonable sum in respect of that service, and that twopence per ton was a reasonable sum for providing coal shoots for unloading coal waggons, which was a service within the excepting clause (*ib.*).

Signalling and interlocking apparatus.

The providing, maintaining and working signalling and interlocking apparatus at a junction with a branch line to a colliery was held not to be an extraordinary service where the branch line was not a private one, but belonged to the railway company, and was used by them to some extent for general traffic (*Neston Colliery Co. v. L. & N. W. & Gt. W. Ry. Cos.*, 4 B. & Mac. 257).

Charge made for work done on sidings without parliamentary authority.

Where a railway company, having no power under its special Act to make a terminal charge for services at the junction of their line with the sidings, and whose trains called for trucks standing in different sidings, made a charge for the work done on the sidings in addition to the mileage rate for conveyance on the railway, it was decided that the company was not entitled to make the charge complained of if the owners of the sidings placed their trucks as near to the junctions as they could be brought with safety to the main line, arranged in proper order, and clear of any obstacles to their being moved away (*Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co.*, 3 N. & Mac. 6; and see *Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co.* (No. 2), 3 N. & Mac. 446).

Use of waggons off line. Special service.

Where a railway company allowed the use of its waggons to certain persons off their own line, between their terminal stations and the applicant's premises, it was held that that was a service not incidental to conveyance of goods, but was a special service, for which a reasonable sum might be charged in addition to the rates authorised for conveyance (*Aberdeen Commercial Co. v. Gt. N. of Scotland Ry. Co.*, 3 N. & Mac. 205).

Trucks standing on line. Services incidental to conveyance.

Where a railway company allowed owner's trucks to stand for a reasonable time on their line after arrival, or before the departure of the train by which they were conveyed, but a time short of that for which they ordinarily charged demurrage, it was decided that this was a service incidental to conveyance, and one for which no sum could be reasonably charged (*Chatterley Iron Co. v. N. Staffordshire Ry. Co.*, 3 N. & Mac. 238).

Charges for unloading into a depôt.

In another case the Court doubted if a railway company could make any terminal charge for merely unloading into a depôt where they had no sidings for delivery (*Locke v. N. E. Ry. Co.*, 3 N. & Mac. 44).

If a service, for which a terminal charge is sought to be made by a railway company, is incidental to conveyance, and therefore covered by the mileage rate, the Commissioners have jurisdiction to determine that the rate authorised for conveyance cannot be increased by the addition of a terminal charge in respect of such service (*Neston Colliery Co. v. L. & N. W. & Gt. W. Ry. Cos.*, 4 B. & Mac. 257).

Jurisdiction of commissioners.

Under this section the commissioners held that their jurisdiction is not confined to fixing the amount to be paid for admitted terminal services, but extends to the decision of the question whether any particular service is one for which a terminal charge can be made (*ibid.*).

Supplying sheets.

The words in a special Act, "a reasonable sum for loading, unloading, collecting, receiving or delivering and for providing covers for minerals, goods, articles or

animals," include not only the supply of sheets, but the cost of the labour of covering the waggons with them (*Coxton v. N. E. Ry. Co.*, 4 B. & Mac. 284).

The words "load" and "unload" in a clause in a special Act are used in their ordinary sense, and are not intended to cover the providing of station accommodation and the like services, which are ordinarily described by other words (*Kempson v. Gt. W. Ry. Co.*, 4 B. & Mac. 426).

As to what would be reasonable charges for supplying sheets for loading and assisting at unloading, see *Coxton v. N. E. Ry. Co.*, 4 B. & Mac. 284.

The provision of siding accommodation at the receiving station, the taking waggons out of and placing waggons in such sidings, are services incidental to conveyance, and not extraordinary services (*Neston Colliery Co. v. L. & N. W. & Gt. W. Ry. Cos.*, 4 B. & Mac. 257).

Shunting trucks, marshalling traffic, and finding, providing and maintaining siding accommodation, loading platforms, roads for ingress and egress of carts and horses at the stations, are not services for which a charge can be made under the ordinary clause (*Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co.*, 4 B. & Mac. 128; but see *Hall v. L. B. & S. Coast Ry. Co.*, 15 Q. B. D. 506).

The marshalling of the trucks of a coal train in a station and on a railway company's own siding is a service incidental to conveyance, for which no terminal charge can be made (*Neston Colliery Co. v. L. & N. W. & Gt. W. Ry. Cos.*, 4 B. & Mac. 254).

It being the ordinary duty of a carrier to apprise persons to whom goods are directed of their arrival, notice to the consignee of the arrival of traffic is a service incidental to conveyance (*ibid.* 257; *Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co.*, 4 B. & Mac. 128).

The expense of invoicing the traffic, and of clerkage, is incidental to conveyance, and is not a service for which under the ordinary clause a terminal charge can be made (*ibid.*).

The use of a junction between one part of a company's line and another is included in the right to use the lines, and the cost of working the junction is paid for in the mileage rate for conveyance (*Neston Colliery Co. v. L. & N. W. & Gt. W. Ry. Cos.*, 4 B. & Mac. 257).

A railway company were authorized to charge for hops a rate not exceeding a certain sum per mile, being "the maximum rate of charge, including the tolls for the use of the railway and branches and of carriage and for locomotive power, and any other expenses incidental to such conveyance, except a reasonable charge for loading and unloading goods where such service is performed by the company." The railway company charged more than the maximum mileage rate, and justified the excess by saying that they charged for (1) loading and assistance in supervision of loading; (2) unloading; (3) weighing, checking, clerkage and watching; (4) shunting; and (5) use of siding and station accommodation. The railway commissioners held that the terms loading and unloading did not include more than the labour of packing and unpacking a goods train or goods truck, whether done by hand or by machinery, and that the third, fourth and fifth matters mentioned were services incidental to conveyance, and were not services for which a charge could be made under the above section (*Berry v. L. C. & Dover Ry. Co.*, 4 B. & Mac. 310).

Where a company was authorized to demand in addition to the maximum "a reasonable sum for loading, unloading, and covering and delivery of goods, and other services incidental to the business of a carrier, where such services respectively shall be performed by the company; and warehousing, wharfage, and any other extraordinary services which may be reasonably and properly performed by the company in relation to such goods," and where they sought to charge and did charge (1) for loading and unloading; (2) for station accommodation; (3) for shunting and placing waggons in position for loading, including use of junctions and haulage of waggons to the place where they were picked up by the train; (4) for advising consignees of receipt of goods at station, clerkage, &c.; (5) for weighing, checking, clerkage, and watching the labelling at railway stations; (6) for advising persons at their request of the arrival of their goods, consigned to their order, with clerkage, stationery and stamps; (7) for clerkage, checking, and watching at receiving station, the commissioners decided that the services 2, 3, 5, 6 and 7 were services incidental to conveyance, and were not chargeable under the section (*Kempson v. Gt. W. Ry. Co.*, 4 B. & Mac. 426).

Several of the above decisions are overruled.

Where in a special Act "the maximum rates of charges to be made by the company for the conveyance of animals and goods, including the tolls for the use of their railway, &c., and every other expense incidental to conveyance (except a reasonable sum for loading and unloading the goods at any terminal station of such goods, and for delivery and collection, and any other services incidental to

36 & 37 Vict.
c. 48, s. 15.

Load and
unload.

Charge for
supplying
sheets.
Siding accom-
modation.

Shunting and
marshalling
trucks.

Notice to
consignees.

Invoicing
traffic not a
terminal
service.

Use of junc-
tion covered
by mileage
rate.

Loading,
weighing,
shunting, and
use of sidings.

Loading station
accommodation.

Shunting.

36 & 37 Vict.
c. 48, s. 16.

the duty or business of a carrier, when such services or any of them are or is performed by the company) shall not exceed" certain specified sums, it was decided that station accommodation, the use of sidings, weighing, checking, clerkage, watching and labelling may be and *prima facie* are "services incidental to the duty or business of a carrier" (*Hall v. London & Brighton Ry. Co.*, 15 Q. B. D. 505).

Whether the providing of station accommodation and sidings, and the performing of the services of weighing, checking, clerkage, watching and labelling in respect of goods traffic carried by a railway company as carriers is in any particular case a "service incidental to the duty or business of a carrier" is a question of fact for the commissioners to decide. But if found by them to be so, the company may make a separate reasonable charge in respect of such services in addition to the rates prescribed (*ibid.*).

Rebates for
carting.

It would seem that the rebates allowed by railway companies to customers who cart for themselves need not necessarily be of the same amounts as those which they charge when they cart for the consignor (*Kempson v. Gt. W. Ry. Co.*, 4 B. & Mac. 426).

A railway company charging for use of weighing machine by which a trader weighed his coals to his customers, although there was no power to make such a charge in the company's special Acts, is not acting *ultra vires* (*L. & N. W. Ry. Co. v. Price*, 9 Q. B. D. 485).

Special case.

The commissioners have power to state a special case for the opinion of the High Court under this section (*Hall & Co. v. London & Brighton Ry Co.*, 15 Q. B. D. 505).

Arrangements
between rail-
way com-
panies and
canal com-
panies.

16. No railway company or canal company, unless expressly authorised thereto by any Act passed before the passing of this Act, shall, without the sanction of the commissioners, to be signified in such manner as they may by general order or otherwise direct, enter into any agreement whereby any control over or right to interfere in or concerning the traffic carried or rates or tolls levied on any part of a canal is given to the railway company, or any persons managing or connected with the management of any railway; and any such agreement made after the commencement of this Act without such sanction shall be void.

The commissioners shall withhold their sanction from any such agreement which is in their opinion prejudicial to the interests of the public.

Not less than one month before any such agreement is so sanctioned, copies of the intended agreement certified under the hand of the secretary of the railway company or one of the railway companies party or parties thereto, shall be deposited for public inspection at the office of the commissioners, and also at the office of the clerk of the peace of the county, riding, or division in England or Ireland in which the head office of any canal company party to the agreement is situate, and at the office of the principal sheriff clerk of every such county in Scotland, and notice of the intended agreement, setting forth the parties between whom or on whose behalf the same is intended to be made, and such further particulars with respect thereto as the commissioners may require, shall be given by advertisement in the *London*, *Edinburgh*, or *Dublin Gazette*, according as the head office of any canal company party to the agreement is situate in England, Scotland, or Ireland, and shall be sent to the secretary or principal officer of every canal company any of whose canals communicates with the canal of any company party to the agreement; and shall be published in such other way, if any, as the commissioners for the purpose of giving notice to all parties interested therein by order direct.

17. Every railway company owning or having the management of any canal (a) or part of a canal shall at all times keep and maintain such canal or part, and all the reservoirs, works, and conveniences thereto belonging, thoroughly repaired and dredged and in good working condition, and shall preserve the supplies of water to the same, so that the whole of such canal or part may be at all times kept open and navigable for the use of all persons desirous to use and navigate the same without any unnecessary hindrance, interruption, or delay (b).

36 & 37 Vict.
c. 48,
ss. 17—19.

Maintenance
of canals by
railway com-
panies.

(a) A railway company managed a canal, collected the tolls, repaired the weirs and lock gates, and paid the rents due to the proprietors of the navigation, and it was held that they were a railway company "having the management of" a canal within the meaning of this section (*Foster v. Gt. W. Ry. Co.*, 3 N. & Mac. 14).

Having the
management
of canal.

(b) In the same case it was decided that as the company had discontinued the management and collection of tolls before the date of an application seeking to enforce the provisions of this section, they had relieved themselves from the liability to maintain the canal under the above provisions (*ib.*).

Where com-
pany relieved
of responsi-
bility under
section.

See as to this section *per* Lush, J., in *Railway Commissioners v. South Eastern Ry. Co.*, 3 Q. B. D. 217, at p. 248.

18. Every railway company shall convey by any train all such mails as may be tendered for conveyance by such train, whether such mails be under the charge of a guard appointed by the Postmaster General or not, and notwithstanding that no notice in writing requiring mails to be conveyed by such train has been given to the company by the Postmaster General (c).

Conveyance
of mails.

Every railway company shall afford all reasonable facilities for the receipt and delivery of mails at any of their stations without requiring them to be booked or interposing any other delay.

(c) See note to section 19.

Where the mails are in charge of a guard appointed by the Postmaster General, every railway company shall permit such guard, if he think fit, to receive and deliver them at any station by himself or his assistants, rendering him nevertheless such aid as he may require.

19. Every railway company shall be entitled to reasonable remuneration for any services performed by them in pursuance of this Act with respect to the conveyance of mails, and such remuneration shall be paid by the Postmaster General.

Remuneration
for convey-
ance of mails.

Any difference between the Postmaster General and any railway company as to the amount of such remuneration, or as to any other question arising under this Act, shall be decided by arbitration, in manner provided by the Act of the session of the first and second years of the reign of her present Majesty, chapter ninety-eight, or, at the option of such railway company, by the commissioners.

Upon an application by the Postmaster General to the commissioners for an injunction against a railway company to compel them to carry the mails pursuant to the 18th section, it was objected by the company that the court had no jurisdiction, as the complaint came within this (the 19th) section, and should be determined according to the statute 1 & 2 Vict. c. 98. The court held, however, that it was not a "difference" within the meaning of this section, and that the words "any

Difference
under section.

36 & 37 Vict.
c. 48,
ss. 20—25.

other question" in the section should be confined by the preceding particular words to questions of remuneration, compensation, and the like (*The Postmaster General v. Highland Ry. Co.*, 2 N. & Mac. 34).

Conveyance
of mails on
steam vessels.

20. Where a railway company use, maintain, or work, or are party to any arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, all provisions contained in any Act with respect to the conveyance of mails by railways shall, so far as they are applicable to the conveyance of mails by steam vessels, extend to the steam vessels so used, maintained, or worked.

Use, &c.,
steam vessel.

As to the meaning of the words, "use, maintain, or work, or are party to any arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports," see *Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 2 N. & Mac. 227, at p. 233.

Assistant
commis-
sioners.

21. The assistant commissioners shall be subject to the orders of the commissioners, and shall make such inquiries and reports and perform such other acts and services as the commissioners may direct; and it shall be lawful for such assistant commissioners, or either of them, to undertake such arbitration under the Act as the commissioners with the consent of the parties to such arbitration may direct; and the said assistant commissioners for the purposes of such inquiries, reports, and arbitrations shall have and may exercise all powers of entry, inspection, summoning and examining witnesses, requiring the production of documents, and administering an oath by this Act conferred upon the commissioners.

Salary of
commis-
sioners.

22. There shall be paid to each of the commissioners such salary not exceeding three thousand pounds a year, and to each assistant commissioner such salary not exceeding fifteen hundred pounds a year, as the treasury determine.

The salaries and expenses of the commissioners and of their officers and of the assistant commissioners shall be paid out of moneys to be provided by Parliament.

Assessors.

23. The commissioners may from time to time, in the exercise of any jurisdiction in this Act, conferred on them, with the consent of the treasury, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge. There shall be paid to such assessors such remuneration as the treasury, upon the recommendation of the commissioners may direct.

Appointment
of officers.

24. The commissioners may from time to time appoint such officers and clerks with such salaries as the commissioners, with the sanction of the treasury, think fit.

Powers of
commis-
sioners.

25. For the purposes of this Act the commissioners shall, subject as in this Act mentioned, have full power to decide all questions whether of law or of fact, and shall also have the following powers; that is to say,

(a.) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any place

or building, being the property or under the control of any railway or canal company, the entry or inspection of which appears to them requisite; 36 & 37 Vict.
c. 48, s. 26.

- (b.) They may require the attendance of all such persons as they think fit to call before them and examine, and may require answers or returns to such inquiries as they may think fit to make;
- (c.) They may require the production of all books, papers, and documents relating to the matters before them;
- (d.) They may administer an oath;
- (e.) They may when sitting in open court punish for contempt in like manner as if they were a court of record (a).

Every person required by the commissioners to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record; and in case of a dispute as to the amount to be allowed, the same shall be referred to a master of one of the superior courts, who, on request, under the hands of the commissioners, shall ascertain and certify the proper amount of such expenses.

(a) A court of record has power to fine and imprison for contempt committed in the face of the court while the court is sitting in the administration of justice (*Reg. v. Lefroy*, L. R. 8 Q. B. 134). The exercise of this summary jurisdiction has only been justified in cases of emergency (*Reg. v. Clement*, 4 B. & Ald. 218; *Roach v. Garvan*, 2 Atk. 469; *Charlton's Case*, 2 My. & Cr. 316). Contempt.

26. Any decision or any order made by the commissioners for the purpose of carrying into effect any of the provisions of this Act may be made a rule or order of any superior court, and shall be enforced either in the manner directed by section three of the Railway and Canal Traffic Act, 1854, as to the writs and orders therein mentioned, or in like manner as any rule or order of such court (a). Orders of
commis-
sioners.

For the purpose of carrying into effect this section, general rules and orders may be made by any superior court in the same manner as general rules and orders may be made with respect to any other proceedings in such court.

The commissioners may review and rescind or vary any decision or order previously made by them or any of them.

The commissioners shall, in all proceedings before them under sections 6, 11, 12, and 13 of this Act, and may, if they think fit, in all other proceedings before them under this Act, at the instance of any party to the proceedings before them, and upon such security being given by the appellant as the commissioners may direct, state a case in writing for the opinion of any superior court determined by the commissioners upon any question which in the opinion of the commissioners is a question of law (b).

The court to which the case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the commissioners with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such

36 & 37 Vict.
c. 48,
ss. 27, 28.

order as to costs as to the court may seem fit, and all such orders shall be final and conclusive on all parties: Provided that the commissioners shall not be liable to any costs in respect or by reason of any such appeal.

The operation of any decision or order made by the commissioners shall not be stayed pending the decision of any such appeal, unless the commissioners shall otherwise order.

Save as aforesaid, every decision and order of the commissioners shall be final.

(a) The commissioners have power to state a special case for the opinion of the High Court under sect. 15 (*Hall v. L. B. & S. C. Ry. Co.*, 15 Q. B. D. 505).

Notwithstanding the limitation of review in this section, the Court of Session has jurisdiction to determine whether the commissioners have, in making an order as to through rates, exceeded their powers (*Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.*, 3 N. & Mac. 145).

No appeal lies to the Court of Appeal from a decision of a Divisional Court on a special case under this section (*Hall v. L. B. & S. C. Ry. Co.*, 17 Q. B. D. 230).

If the commissioners hold that there is evidence of a breach of sect. 2 of the Railway and Canal Traffic Act, 1864, when there is no evidence, that is an error in law in respect of a matter within their jurisdiction, and consequently is matter for appeal and not for prohibition (*Denaby Main Colliery Co. v. M. S. & L. Ry. Co.*, 3 N. & Mac. 426).

In one case the Court of Queen's Bench refused to make an order for attachment against the directors of a company or for the payment of penalties by the company for disobedience of an order of the commissioners, holding that the power to make such orders was not given to that court by this section (*Chatterley Iron Co. Limited v. N. Staffordshire Ry. Co.*, 3 N. & Mac. 238).

In that case the railway commissioners subsequently made an order that the company should pay 50l. a day so long as they failed to obey their former order (*ib.*; and see *Watkinson v. Wrexham, Mold & Connah's Quay Ry. Co.* (No. 2), 3 N. & Mac. 446).

An application to enforce an order of the commissioners made under section 8 of this Act, by the penalties referred to in section 3 of the Railway and Canal Traffic Act, can be made under this section (*Portpatrick Ry. Co. v. Caledonian Ry. Co.*, 3 N. & Mac. 189).

(b) If the commissioners refuse to state a case where under this section they are required to do so, a mandamus will lie (*Central Wales & Carmarthen Junction Ry. Co. v. Gt. W. Ry. Co.*, 2 N. & Mac. 199).

In cases where the commissioners have not a discretion, the matter to be referred for the opinion of a superior court must be a question of law—i. e., it must be a point of law—on which there has been no decision. But where there is a discretion, the commissioners will only grant a case where they desire, for their information, the opinion of a superior court, and will not do so where they think the matter in question unarguable (*Gt. W. of Scotland Ry. Co. v. Highland Ry. Co.*, 19 December, 1885).

Refusal to
state a case.

Sittings of
commis-
sioners.

27. The commissioners shall sit at such times and in such places and conduct their proceedings in such manner as may seem to them most convenient for the speedy despatch of business; they may, subject as in this Act mentioned, sit either together or separately, and either in private or in open court, but any complaint made to them shall, on the application of any party to the complaint, be heard and determined in open court.

Costs.

28. The costs of and incidental to any proceeding before the commissioners shall be in the discretion of the commissioners.

The commissioners have no jurisdiction to order a defendant, in whose favour they have decided, to pay costs to the unsuccessful applicant. Their discretion as to costs is not greater than that given to the High Court under Order LV. rule 1 of the Rules of the Supreme Court (*Foster v. Gt. W. Ry. Co.*, 4 B. & Mac. 58).

Where applicants substantially succeeded on their whole application they were granted costs (*Neston Colliery Co. v. L. & N. W. and Gt. W. Ry. Cos.*, 4 B. & Mac. 257).

36 & 37 Vict.
c. 48, s. 29.

In cases under sect. 11 (through rate cases) it is not the practice of the commissioners to give costs, as the defendants have a right to their judgment before a through rate is put in operation (*Central Wales, &c. Ry. and Mid-Wales Ry. Cos. v. Gt. W. and other Ry. Cos.*, 4 B. & Mac. 110. See also *Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co.*, 4 B. & Mac. at p. 134).

Under sect. 15 the applicants under Gen. Order 10 are to state the amount that they contend the charges in dispute ought to be. Where they offered an amount far below what the commissioners held to be reasonable, while the railway company claimed to be allowed sums much in excess of those allowed by the commissioners, no order was made as to costs (*Coxton v. N. E. Ry. Co.*, 4 B. & Mac. 289).

A railway company refusing to show their rate books under sect. 14 of this Act will have to pay the costs of proceedings which parties had reasonable and probable cause for taking (*Clonmel Traders and Southern Ry. Co. v. Waterford & Limerick Ry. Co.*, 4 B. & Mac. 92).

Costs under
section 14.

Where the commissioners determined, under sect. 15, that a railway company had made charges in excess of their powers, and greatly in excess of what the commissioners held to be reasonable, they were ordered to pay the applicant's costs (*Berry v. L. C. & Dover Ry. Co.*, 4 B. & Mac. 310).

Costs.

29. The commissioners may at any time after the passing of this Act and from time to time make such general orders as may be requisite for the regulation of proceedings before them, including applications for and the stating of cases for appeal, and also for prescribing, directing, or regulating any matter which they are authorised by this Act to prescribe, direct, or regulate by general order, and also for enabling the commissioners in cases to be specified in such general orders to exercise their jurisdiction by any one or two of their number: Provided, that any person aggrieved by any decision or order made in any case so specified may require a re-hearing by all the commissioners; they may further make regulations for enabling them to carry into effect the provisions of this Act, and may from time to time revoke and alter any general orders or regulations made in pursuance of this Act. Every general order, and every alteration in a general order, made in pursuance of this section shall be submitted to the Lord Chancellor for approval, and shall not come into force until it shall be approved by him.

Power of
commis-
sioners to
make general
orders.

Every general order purporting to be made in pursuance of this Act shall, immediately after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within seven days after the then next meeting of Parliament, and if either House of Parliament by a resolution passed within two months after such general order has been so laid before the said House, resolve that the whole or any part of such general order ought not to continue in force, the same shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other general order in its place, or to anything done in pursuance of such general order before the date of such resolution; but, subject as aforesaid, every general order purporting to be made in pursuance of this Act shall be deemed to have been duly made and within the powers of this Act, and shall have effect as if it had been enacted in this Act.

The General Order of the commissioners, made in pursuance of this section, will be found at p. 695.

36 & 37 Vict.
c. 48,
ss. 30—38.

Evidence of
documents.

30. Every document purporting to be signed by the commissioners, or any one of them, shall be received in evidence without proof of such signature, and until the contrary is proved shall be deemed to have been so signed and to have been duly executed or issued by the commissioners.

Commis-
sioners to
make annual
reports.

31. The commissioners shall, once in every year, make a report to her Majesty of their proceedings under this Act during the past year, and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

Miscellaneous.

Determina-
tion of fees.

32. The commissioners may, at any time after the passing of this Act, by general order with the concurrence of the treasury, appoint the fees to be taken in relation to proceedings before them, and may from time to time, by general order, with the like concurrence, increase, reduce, or abolish all or any of such fees, and appoint new fees to be taken in relation to such proceedings.

Collection of
fees.
29 & 30 Vict.
c. 76.

33. The Public Offices Fees Act, 1866 (*a*), shall apply to all fees taken in relation to any proceedings before the commissioners.

Any fee or payment in the nature or lieu of a fee paid in respect of any proceedings before the commissioners and collected otherwise than by means of stamps shall be paid into the receipt of her Majesty's exchequer in such manner as the treasury from time to time direct, and carried to the Consolidated Fund.

(*a*) This Act was superseded and repealed by 42 & 43 Vict. c. 58, s. 8; and see the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

Taxation of
costs.

34. The costs, charges, and expenses of and incidental to any proceedings before the commissioners which are incurred by any person, shall, if required, be taxed in the same manner and by the same persons as if such proceedings were proceedings in a superior court.

Notices how
to be given.

35. Any notice required or authorised to be given under this Act may be in writing or in print, or partly in writing and partly in print, and may be sent by post, and if sent by post shall be deemed to have been received at the time when the letter containing the same would have been delivered in the ordinary course of the post; and in proving such sending it shall be sufficient to prove that the letter containing the notice was prepaid and properly addressed and put into a post-office.

Application
of Act to
Scotland.

36. In the application of this Act to Scotland—

(1.) The term "attending on subpoena before a Court of Record" means attending on citation the Court of Justiciary:

- (2.) the Queen's and Lord Treasurer's Remembrancer shall perform the duties of a master of one of the superior courts under this Act. 36 & 37 Vict.
c. 48, s. 37.

Temporary Provisions.

37. This Act shall continue in force for five years next after the passing of this Act, and thenceforth until the end of the then next session of Parliament, but the expiration of this Act shall not affect the validity of anything done before such expiration.

Duration of office and powers of commissioners.
[Extended till 31st Dec. 1882, by 42 & 43 Vict. c. 56.]

GENERAL ORDERS

MADE

Pursuant to the Statute 36 & 37 Vict. c. 48, s. 29, intituled "An Act to make better provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith."

Interpretation.

1. In the construction of these orders and the forms herein referred to, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number, and the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them; that is to say, "application" shall include complaint under this Act, "applicant" shall include any complainant under this Act, and "defendants" shall mean the persons or company against whom the application or complaint is made.

Application or Complaint to the Commissioners.

2. Every proceeding before the commissioners under this Act shall be commenced by an application made to them, which shall be in writing, and signed by the applicant or his solicitor, or in the case of a corporate body, or company, or local or harbour board being applicants, shall be signed by their manager, secretary, or solicitor. It shall contain a clear and concise statement of the facts, the grounds of application, and of the relief or remedy to which the applicant claims to be entitled. It shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively. It shall be endorsed with the name and address of the applicant, and if there be a solicitor acting for him in the matter, with the name and address of such solicitor, and if he be an agent for another solicitor in the matter, then also with the name and address of such other solicitor. The application shall be according to Form No. 1 in the schedule hereto, or to the like effect.

Proceeding how commenced, and form of application generally.

**General
Orders,
3-9.**

Under ss. 6
and 13 of this
Act.

Under s. 8.

3. Every application made to the commissioners under sections 6 and 13 of this Act shall be for an order enjoining the company complained of to do or to desist from doing the acts therein specified.

4. Every application made to the commissioners under section 8 of this Act (unless both parties consent to refer the difference to the commissioners), shall be for an order to refer the difference to the commissioners for their decision, in lieu of being referred to arbitration. The applicant shall state whether or not it is a case in which any arbitrator has in any general or special Act been designated by his name or by the name of his office, or in which a standing arbitrator has been appointed under any general or special Act.

Under s. 9.

5. Every application made to the commissioners under section 9 of this Act shall be signed by all the parties to the difference, or their solicitors, and shall be for permission to refer the difference to the commissioners for their decision.

Under s. 10,
sub-sec. 1.

6. Every application made to the commissioners under section 10, sub-section 1 of this Act, shall be for the approval by the commissioners of any working agreement between railway companies, whereof they desire to have the commissioners' approval, or shall be for the exercise of any other powers (to be specified in the said application) transferred by the said sub-section to the commissioners with respect to the approval of such working agreement.*

Under s. 11,
sub-sec. 4.

7. Every application made to the commissioners under section 11, sub-section 4, of this Act, shall be for an order allowing the through rate or route, or through rate and route proposed by the applicant and objected to by the forwarding company.†

Under s. 11,
sub-sec. 6.

8. Every application made to the commissioners under section 11, sub-section 6, of this Act, shall be for an order allowing the apportionment of the through rate proposed by the applicant and objected to by the forwarding company.

Under s. 14.

9. Every application made to the commissioners under section 14 of this Act, shall be for an order upon the railway company or canal company, against whom the application is made, to distinguish in the book or books therein mentioned how much of the rate in respect whereof the application is made is for the conveyance of the particular description of traffic therein named on the railway or canal in question, including therein tolls for the use of the railway or canal, for use of carriages or vessels, or for locomotive or other tractive power,‡ and how much is for other expenses, specifying the nature and detail of such other expenses.

* Directions have been issued by the commissioners prescribing the steps to be taken in order to obtain their approval of working agreements. These are printed at length at pp. 709, 710.

† The commissioners seem only to have the power to allow or refuse the rate. They can, however, refuse the rate if the route is an unreasonable one.

‡ The words "other tractive" do not occur in section 14.

The applicant in such case shall state that he is interested in the matter, and show how he is interested therein.

General
Orders,
10-14.

10. Every application made to the commissioners under section 15 of this Act, shall be for them to hear and determine the question or dispute therein mentioned with respect to the terminal charges of the company against whom the application is made, and to decide what is a reasonable sum to be paid to such company for loading and unloading, covering, collection, delivery, and other services of a like nature. The application in such case shall state the actual amount of such charges, and the amount which the applicant contends that they ought to be.

Under s. 15.

11. Every application made to the commissioners under section 16 of this Act, shall be for them to sanction the agreement therein mentioned, such sanction to be signified by certificate under their seal.

Under s. 16.

12. Every application made to the commissioners under section 17 of this Act, shall be for an order upon the railway company, against whom the application is made, restraining them from permitting and suffering the canal therein mentioned, or parts thereof, or works belonging thereto, to remain unrepaired, or in want of dredging, or not in good working condition, or without proper supplies of water thereto; and also enjoining them to keep and maintain the said canal or such parts thereof, or such works thereto belonging, thoroughly repaired or dredged or in good working condition, or to preserve the supplies of water to the same. The application in such case shall specify the obstruction, non-repair, or other defect sought to be remedied, and show in what part of the canal or works such obstruction, non-repair, or other defect exists.*

Under s. 17.

13. The application so written and signed as aforesaid shall be left with the registrar to the commissioners at their office, and except in cases under sections 10, 14, and 16 of this Act, three copies of the application shall also be left with the registrar, together with any documents, maps, plans, time tables, and special Acts referred to therein or which may be useful in explaining or supporting the same. The registrar shall make out a list of the applications so left according to the order in which they are received by him, and such list may be inspected at the office during office hours, and shall for that purpose be put upon a notice board appropriated to proceedings under this Act. The applications shall be heard by the commissioners so far as it may in their judgment be practicable according to the order in which they are so entered upon the list.

How left at
the commis-
sioners' office.

14. In all proceedings under this Act (except under sections 9, 10, and 19, and subject to general order number 18 hereinafter

Indorsement
upon applica-
tion.

* Other applications under this Act, and statements of cases under the Board of Trade Arbitrations Act, 1874, Part II., will be made, as nearly as may be, in accordance with the above orders.

**General
Orders,
18-21.**

mentioned) a copy or copies of the application for the purpose of service shall be indorsed with a notice to the defendants to put in an answer to the application within ten days from the service thereof, and that the same will be heard at the hour and place therein mentioned in twenty days from the service thereof, and in default of the defendants then and there appearing the commissioners may hear and determine the application *ex parte*. Such indorsement shall be sealed by the registrar to the commissioners with their seal.

**Time for
answer and
hearing may
be abridged
or enlarged.**

15. The commissioners may abridge the periods for putting in the answer and for hearing the application, and in that case the shorter periods shall be indorsed upon the application accordingly, and they may from time to time enlarge the periods for putting in the answer or for hearing the application.

**Service of
application.**

16. A copy of the application so indorsed as aforesaid shall in all cases (except under sections 9, 10, and 19 of this Act and subject to general order number 18 hereinafter mentioned) be served by leaving the same with the manager, secretary, or chief clerk of the defendants at their principal office in any part of the United Kingdom or in such manner as the commissioners by special order may direct.

**Affidavit of
service.**

17. The person serving the application shall forthwith make an affidavit thereof stating the day on which service was made, and shall leave the same with the registrar to the commissioners at their office.

*Suspension of Proceedings.***Communica-
tion by com-
missioners to
company com-
plained of.**

18. If the commissioners think fit, in pursuance of section 7 of this Act, to communicate the application to the company against whom it is made, so as to afford them an opportunity of making observations thereon before requiring or permitting the same to be served or any formal proceedings to be taken thereon, they shall give notice thereof to the applicant within five days from the date of the application having been left at their office, and thereupon all formal proceedings thereon shall be suspended until further notice from the commissioners to the applicant.

**Commis-
sioners requir-
ing further
information.**

19. The commissioners may also within the said period of five days require further information or particulars or documents from the applicant, and may suspend all formal proceedings upon the application until satisfied in this respect.

**Inquiries
under this
Act and the
Act of 1854.**

20. If the commissioners at any stage of the proceedings think fit to direct inquiries to be made under section 25 of this Act or under section 3 of the Railway and Canal Traffic Act, 1854, they shall give notice thereof to the parties to the application, and may stay proceedings or any part of the proceedings thereon until further notice from the commissioners.

*Consent Cases.***Parties dis-
pensing with**

21. In all cases the parties may by consent in writing dispense with the formal proceedings hereinafter mentioned, or some

portion of them, and orders by consent may be drawn up, and, if approved of by the commissioners, may be sealed with their seal.

General
Orders,
23—25.

formal pro-
ceedings.

Answer.

22. Within ten days from the service of the application or within such shorter or extended time as may be fixed by the commissioners, the defendants shall deliver to the applicant or to his solicitor a written statement containing in a clear and concise form their answer to the application, and shall also leave four copies thereof with the registrar to the commissioners at their office, together with any documents that may be useful in explaining or supporting it. The answer may admit the whole or any part of the facts stated in the application. It shall be divided into paragraphs, which shall be numbered consecutively, and it shall be signed by the person actually making the same, and who is acquainted with the facts stated therein. It shall be indorsed with the name and address of the defendants, and if there be a solicitor acting for them in the matter, with the name and address of such solicitor, and if he be an agent for another solicitor in the matter, then also with the name and address of such other solicitor. It shall be in Form No. 2 in the said schedule, or to the like effect.

Time for de-
livery and
form of.

Reply.

23. Within four days from the delivery of the answer to the applicant, or within such further or extended time as may be fixed by any special order of the commissioners, he shall deliver a reply thereto to the defendants, and four copies thereof to the registrar to the commissioners, and may object to the said answer as being insufficient, stating the grounds of such objection, or deny the facts stated therein, or may admit the whole or any part of such facts. The reply shall be signed by the applicant, and be according to Form No. 3 in the said schedule, or to the like effect.

Time for de-
livery and
form of.

24. The commissioners may at any time require the whole or any part of the application, answer, or reply, to be verified by affidavit upon giving a notice to that effect to the party from whom the affidavit is required, and if such notice be not complied with, the application, answer, or reply, may be set aside, or such part of it as is not verified according to the notice may be struck out.

Verification of
proceedings.

Power to direct and settle Issues.

25. If it appear to the commissioners at any time that the statements in the application or answer or reply do not sufficiently raise or disclose the issues of fact in dispute between the parties, they may direct them to prepare issues, and such issues shall, if the parties differ, be settled by the commissioners.

Commis-
sioners may
direct issues.

**General
Orders,
36—41.**

Hearing to
proceed from
day to day.

36. The hearing of the case when once commenced shall proceed, so far as in the judgment of the commissioners may be practicable, from day to day.

Judgment of Commissioners.

Form of.

37. After hearing the case the commissioners may dismiss the application, or make an order thereon in favour of the defendants, or reserve their decision, or (subject to the right of appeal in this Act mentioned) make such other order upon the application as may be warranted by the evidence, and may seem to them just.

May be in
writing and
sent or deli-
vered to the
parties.

38. The commissioners may give their decision in writing, signed by them, and it may be sent, or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving such decision.

Costs.

How taxed
and recovered.

39. Costs shall be taxed upon the order of the commissioners by which they are payable, and when taxed may be recovered by making such order a rule of any superior court in the ordinary way, and issuing execution upon such rule, or may be recovered in any other manner according to the practice of the said court.

Alteration or rescinding of Orders.

When appli-
cation for, to
be made.

40. Any application to the commissioners to review and rescind or vary any decision or order previously made by them, and not being a decision or order upon an interlocutory application, shall be made within twenty-eight days after the said decision or order shall have been communicated to the parties unless the commissioners think fit to enlarge the time for making such application.

The commissioners will not re-hear a matter merely on the question of costs at the instance of a party who does not ask them to alter their judgment on the merits (*Hamvans, Foster & Others v. Gt. W. Ry. Co.*, 4 B. & Mac. at p. 189).

Where by inadvertence upon the part of one of the parties or of the commissioners themselves, an order has been made which would have the effect of prejudicing a third party, the commissioners will re-hear the matter under this order (*Gt. N. of Scotland Ry. Co. v. Highland Ry. Co.*, 19th Dec. 1885).

The commissioners refused an application to review a decision given by them a year before (*Denaby Colliery Co. v. M. S. & L. Ry. Co.* (No. 2), 4 B. & Mac. 23).

Appeal.

To a superior
court.

41. If either party desire to appeal to a superior court from the decision of the commissioners upon any question which, in the opinion of the commissioners, is a question of law, he shall give notice thereof to the other party and to the registrar within fourteen days from the time when the decision was communicated to the parties, and shall therein state what the question of law is and express his intention to apply to the commissioners on a certain day to be therein named (not exceeding fourteen days from the date of the notice) to state a case in writing for the opinion of a

superior court, to be determined by the commissioners upon such security being given as they may direct.

General
Orders,
42—45.

But it seems that the commissioners draw a distinction between orders which require some act to be done, and orders which simply refuse to make such a thing obligatory. In the former they seem to think that the time would date from the receipt of the order, in the latter from the time when the judgment was delivered (*Highland Ry. Co. v. Gt. N. of Scotland Ry. Co.*, 19th Dec. 1885).

42. If either party desire a re-hearing by all the commissioners of any decision or order made by any one or two of their number, he shall give notice thereof to the other party and to the registrar within fourteen days from the time when the decision or order was communicated to the parties, and shall therein express his desire to have the same re-heard wholly or in part, and his intention to apply to the commissioners on a certain day to be therein named (not exceeding fourteen days from the date of the notice) to re-hear the same, specifying the questions upon which he requires such re-hearing.

To all the
commis-
sioners from
one or two of
them.

Interlocutory Applications.

43. Interlocutory applications may be heard by the commissioners upon summons duly served on the person called upon to answer the application, and may be determined in a summary way. Evidence in such cases may be given by affidavit, but the commissioners may order the attendance for cross-examination of the person making any such affidavit. Any application to the commissioners to review and rescind or vary any decision or order previously made by them upon an interlocutory application shall be made within the time limited for taking the next step in the proceeding.

How heard.

Affidavits.

44. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief with the grounds thereof may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall be paid by the party using or filing the same.

How framed.

45. Any affidavit used in any proceeding before the Railway Commissioners may be sworn as follows:—

Before whom
sworn.

In the United Kingdom before any of the said commissioners or their registrar, or the officer appointed by the commissioners to administer oaths before them (and in these cases without the payment of any fee), or before a person authorised to administer oaths in any of the superior courts of law or equity, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.

**General
Orders,
48—54.**

In any place out of the British dominions, before a British minister, consul, vice consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the court to which such judge or magistrate is attached.

Filing of affidavits, &c., and giving office copies.

46. Affidavits left with the registrar or used before the commissioners shall be filed in their office, and applications, answers, and replies, together with documents left therewith at the said office, shall also be there filed, and office copies of the same shall be given by the registrar upon request of the parties.

Computation of Time.

How computed.

47. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by this Act or by these orders, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

What days to be excluded.

48. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days shall not be reckoned or included in any proceedings under this Act.

For 49, see p. 705.

Adjournment.

Power of commissioners to adjourn.

50. The commissioners may from time to time adjourn any proceedings before them.

Amendment.

Power of commissioners to amend.

51. The commissioners may at any stage of the proceedings allow them to be amended, or may order to be struck out any matters which may tend to prejudice, embarrass, or delay the fair hearing of the case, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Formal Objections.

Not to prevail.

52. No proceedings under this Act shall be defeated by any formal objection.

Commissioners acting separately.

In what cases.

53. The commissioners may, if they think it necessary so to do, exercise their jurisdiction by any one or two of their number in cases under ss. 6, 8, 9, 13, 14, 15, 17, and 19 of this Act, and on all interlocutory applications.

Practice of Superior Courts, when applicable.

Discretion of commissioners in cases not expressly provided for.

54. In any case not expressly provided for by this Act or by these orders, the general principles of practice in the superior courts may be adopted and applied at the discretion of the commissioners to proceedings before them.

This order gives the commissioners power to adopt, if they think fit, the procedure

of any other superior court than that of the country where the cause of action originated. But, unless under special circumstances, they follow the procedure of the court whose jurisdiction would have existed but for the Regulation of Railways Act, 1873.

Where both parties resided in Scotland, and the cause of action arose there, the Court of Session procedure on summonses for inspection and interrogatories was followed (*Macfarlane v. North B. Ry. Co.*, 4 B. & Mac. 206).

**General
Orders,
55 & 49.**

Table of Fees.

55. The fees, a table whereof is in the schedule hereunto annexed, may be demanded and taken in respect of the proceedings before the commissioners. What fees
may be taken.

August 31st, 1874.
Approved,
CAIRNS, C.

FREDERICK PEEL.
H. T. J. MACNAMARA.
W. P. PRICE.

OFFICE OF THE RAILWAY COMMISSIONERS,
WEST FRONT COMMITTEE ROOMS,
HOUSE OF LORDS, 30th May, 1876.

AMENDED GENERAL ORDER made and issued by the Railway Commissioners pursuant to section 29 of "The Regulation of Railways Act, 1873."

Registrar's Office, when open.

The hours and days when open.

49. The registrar's office shall be open from ten o'clock in the forenoon till five o'clock in the afternoon daily, except upon Saturday, when it shall be open from ten o'clock in the forenoon till two o'clock in the afternoon, and except between the 10th day of August and the 24th day of October, when the office is to be open from eleven o'clock in the forenoon till two o'clock in the afternoon.

The office shall be closed on the following days, namely, Good Friday, Easter Eve, Monday and Tuesday in Easter Week, Christmas Day and the three following days, and the Queen's birthday, and Whit Monday and Whit Tuesday.

F. PEEL.
H. T. J. MACNAMARA.
W. P. PRICE.

Approved,
29th May, 1876.
CAIRNS, C.

SCHEDULE.

I.—FORMS.

No. 1. Application.

,, 2. Answer.

No. 3. Reply.

,, 4. Warrant of Commit-
ment for Contempt.

The forms of proceedings contained in this schedule may be used in the cases to which they are applicable, with such alterations as the circumstances of the case may render necessary, but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

No. 1.

Application.

The Regulation of Railways Act, 1873.

In the matter of the application of <i>A.B.</i> against The Company.	{ 1. 2.	<i>A.B.</i> states that
--	---------------	-------------------------

And the said *A.B.* applies to the Railway Commissioners under the above-mentioned Act for an order enjoining the said Company [*here state concisely the nature of the application, as for example,*] to desist from giving any undue preference to themselves or other persons in the carrying or in the collecting, carrying, and delivering, for themselves or other persons, of goods and parcels, or in their charges for the same over the said *A.B.* in the carrying of such goods and parcels for him, and enjoining the said Company not to subject him to any undue prejudice in respect thereof.

Dated this day of 187 .

Signed, *A.B.**[Indorsement.]*

The within Application is made by *A.B.* of [*stating address and occupation, and if there be a solicitor in the matter*] by *C.D.* of [*and if he be agent for the solicitor*] as agent for *E.F.* of solicitor for the said *A.B.*

Additional indorsement on the copy for service.

We, the Railway Commissioners, command you, the within named Company, that in twenty days from the service

of the within application you appear at at o'clock
in the forenoon, and then and there show cause why the within
application should not be granted, and take notice that in default
of your so doing the Commissioners may hear and determine the
said application *ex parte*.

**General
Orders,
Schedule.**

The defendants are within ten days from the service of the within application to put in their answer to the same.

(Sealed.)

No. 2.

Answer.

The Regulation of Railways Act, 1873.

In the matter of the application of *A.B.* against The Company. { The Company in Answer to the Application of *A.B.* state that,—
1.
2.

Dated this day of 187 .
Signed,

[Indorsement.]

This Answer is made on behalf of the said Company by *C.D.* of _____, who is acquainted with the facts stated therein. The solicitor for the said Company is *E.F.* of _____

No. 3.

Reply.

The Regulation of Railways Act, 1873.

In the matter of the application of *A.B.* against The Company. { The said *A.B.*, in reply to the answer of the said Company states that,—
1.
2. And the said *A.B.* admits that

Dated this day of 187 .

Signed,

No. 4.

Warrant of Commitment for Contempt.

The Regulation of Railways Act, 1873.

In the matter of the application of *A.B.* against The *Company.* (Commissioners) sitting in open court pursuant to the above-mentioned Act. { Upon the hearing of this application on the *day of* 187, at *before the Railway Commissioners (or C.D., one of the Railway Commissioners)* sitting in open court pursuant to the above-mentioned Act.

Whereas *A.B.* has this day been guilty, and is by the said commissioners (*or the said C.D. being such commissioner as aforesaid*) adjudged to be guilty of contempt of them (*or him*) sitting in open court as aforesaid. The said commissioners do (*or the said C.D. does*) thereupon sentence the said *A.B.* for his said contempt to be imprisoned in the *gaol for* , and to pay to our lady the Queen a fine of £ , and to be further imprisoned in the said *gaol* until the said fine be paid. And the commissioners further order (*or the said C. D. further orders*) that the sheriff of the said county [*or as the case may be*], and all constables and officers of the peace of any county or place where the said *A.B.* may be found, shall take the said *A.B.* into custody and convey him to the said *gaol*, and there deliver him into the custody of the *gaoler* thereof to undergo his said sentence. And the commissioners further order (*or the said C.D. further orders*) the said *gaoler* to receive the said *A.B.* into his custody, and that he shall be detained in the said *gaol* in pursuance of the said sentence.

Signed this *day of* , 187 .

FREDERICK PEEL.

H. T. J. MACNAMARA.

W. P. PRICE.

Approved,
CAIRNS, C.

II.—TABLE OF FEES.

Appointed by the Commissioners with the concurrence of the Treasury to be taken in relation to the proceedings before the Commissioners.

Fees in ordinary cases.

Receiving and filing every application or statement of case or answer thereto	£	s.	d.
	1	0	0
Receiving and filing every reply, affidavit, or other proceeding	0	2	6

NOTE.—No extra charge is to be made for documents that may accompany any application, answer, reply, or affidavit.

	£	s.	d.	General Orders, Schedule.
Every summons upon interlocutory proceedings	0	5	0	
Every order made thereon	0	2	6	
Attendance by counsel on interlocutory proceedings, each side	0	10	0	
Every order for attendance of witnesses made at request of the parties or either of them	0	2	6	
Every subpoena	0	2	6	
Every hearing not in the nature of an interlocutory pro- ceeding, or of an arbitration	1	0	0	
Office copy of proceedings, per folio	0	0	6	

NOTE.—*Copies of plans, sections, &c., to be paid for by the party requiring them according to the actual cost.*

Fees on commissions and special cases.

Every commission to take evidence	1	0	0
Every special case	0	10	0
If settled by the commissioners	3	3	0

Fees on hearings in the nature of arbitrations.

Every hearing in the nature of an arbitration between railway companies or canal companies, or between railway companies and the Postmaster General under the Regulation of Railways Acts, 1873 and 1874, or either of them, each day or part of a day	15	15	0
Every decision of such difference	5	5	0
Every hearing in the nature of an arbitration, one of the parties being other than a railway company or canal company, each day or part of a day	5	5	0
Every decision of such difference	2	2	0

NOTE.—*The fee for the hearing is to be paid on each day by the party whose case is then being heard, unless the commissioners otherwise order.*

DIRECTIONS OF THE RAILWAY COMMISSIONERS RELATING TO WORKING AGREEMENTS BETWEEN TWO OR MORE RAILWAY COMPANIES.

1. Care should be taken that at least twenty-eight days from the date of the newspaper containing the first insertion of the notice to the public of the intention of the companies to enter into a working agreement are allowed for bringing objections before the Railway Commissioners.

2. At the expiration of the period specified in the notices for bringing objections before the Railway Commissioners, and

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Orders,
Schedule.**

together with the application for their approval there should be sent to their office :

- a. The Act or Acts of Parliament authorising such agreement.
- b. Copies of the newspapers containing the notices of the intention of the two companies to enter into such agreement which are required by the 24th section of the Railway Clauses Act, 1863.
- c. Copies of the newspapers containing the advertisements of each company, required by the 23rd section of the same Act, convening the special meetings at which the agreement was assented to.
- d. A copy of the circular which was addressed to each shareholder.
- e. The agreement, sealed by the companies, together with a certificate given under the hands of the chairman at the meeting, and of the secretary of each company, stating that such agreement was duly assented to by the required proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a general meeting of each of the companies specially convened for that purpose, pursuant to the 23rd section of the same Act.

3. The application to the commissioners for their approval should be made in the manner prescribed by their General Orders of August, 1874, Nos. 2 and 6.

The agreement, when approved by the commissioners, will be returned with their approval signified thereon, and the copy lodged at their office will be retained by them.

NOTE.—Where the special Act or Acts authorising the agreement do not incorporate the Railways Clauses Act, 1863, Part iii., or are of an earlier date, the course of proceeding will be that indicated in the special Acts.

THE RAILWAY REGULATION ACT, 1873.

36 & 37 VICT. c. 76.

An Act to make further Provision for the Regulation of Railways. [5th August, 1873.] 36 & 37 Vict.
c. 76, ss. 1, 2.

WHEREAS it is expedient to make further provision with respect to the regulation of railways:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts hereinafter mentioned may be cited for all purposes by the short titles following; that is to say,

The Act of the session of the third and fourth years of the reign of her present Majesty, chapter ninety-seven, and intituled "An Act for regulating Railways," by the short title of "The Railway Regulation Act, 1840:" Definition of
Railway
Regulation
Acts.
3 & 4 Vict.
c. 97.

The Act of the session of the fifth and sixth years of the reign of her present Majesty, chapter fifty-five, and intituled "An Act for the better regulation of railways and for the conveyance of troops," by the short title of "The Railway Regulation Act, 1842:" 5 & 6 Vict.
c. 55.

This Act, by the short title of "The Railway Regulation Act (Returns of Signal Arrangements, Working, &c.), 1873:"

This Act shall, so far as is consistent with the tenor thereof, be construed as one with the above-mentioned Acts, and the said Acts, together with this Act, may be cited for all purposes as "The Railway Regulation Acts, 1840, 1842, 1873."

2. The expression "Summary Jurisdiction Acts" means—

In England, the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act passed or to be passed amending the same: Definition of
Summary
Jurisdiction
Acts.

In Scotland, the Summary Procedure Act, 1864, and any Act passed or to be passed amending the same:

In Ireland, the Petty Sessions (Ireland) Act, 1851, and in Dublin the Acts regulating the powers of justices of the peace, or of the police of Dublin metropolis, and any Act passed or to be passed amending the said Acts or any of them.

36 & 37 Vict.
c. 78, ss. 3—6.

Definition of
Board of
Trade.

Returns to be
made to the
Board of
Trade by rail-
way com-
panies.

3. The Lords of the Committee of her Majesty's Privy Council appointed for trade and foreign plantations are in this Act referred to as "The Board of Trade."

4. Every railway company shall, on or before the fifteenth day of February in every year, make a full and true return to the Board of Trade of the matters and in the forms specified in the first and second schedules annexed to this Act, and the notes annexed to such schedules shall be deemed to be part of this Act in the same manner as if they were enactments contained in the body thereof.

If any railway company makes default in making any return required by this Act, it shall incur a penalty not exceeding five pounds for every day during which such default continues, such penalty to be recovered in manner provided by the Summary Jurisdiction Acts, upon the complaint of any officer of the Board of Trade: Provided that the Board of Trade may in any case dispense with such return or any part thereof where they deem the same inapplicable.

Returns by
coroners.

5. Every coroner in England and Ireland within seven days after holding an inquest on the body of any person who is proved to have been killed on a railway, or to have died in consequence of injuries received on a railway, and in Scotland every procurator fiscal within the like time and in like cases, shall make to one of her Majesty's principal Secretaries of State, in such form as he may require, a return of the death and the cause thereof.

Amendment
of sect. 6 of
the Railway
Regulation
Act, 1842.

6. Where any inspecting officer of the Board of Trade has reported to that Board, in pursuance of the sixth section of the Railway Regulation Act, 1842, that the opening of any railway or portion of a railway would in his opinion be attended with danger to the public using the same by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, and the Board of Trade have postponed the opening of such railway or portion of a railway in pursuance of such section for the period of one calendar month, it shall be lawful for the said Board, if it thinks fit, unless in the meantime it is stated by the company to whom such railway belongs that all requisitions made by such inspecting officer upon his inspection of such railway or portion of a railway as being necessary for the safety of the public have been complied with, to direct the postponement of the opening of such railway or portion of a railway for a further period not exceeding one month without going to the expense of directing a further inspection to be made by the officer, and so on from time to time until the requisitions made by such officer have been complied with, or the said Board is otherwise satisfied that such railway or portion of a railway can be opened with safety to the public.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

FIRST SCHEDULE.

NAME OF RAILWAY.	Number of cases in which any Passenger Line is connected with or crossed on the level by :—				Number of cases in which the usual requirements of the Inspecting Officers of the Board of Trade have or have not been complied with in the following respects :—				REMARKS.		
	Any other Passenger Line.	Any Goods Line.	Any Siding.	Any Crossover Road.	Concentration of Signal and Point Levers.		Interlocking of Signal and Point Levers.			Addition of Safety Points in case of Goods Lines and Sidings.	
					Have.	Have not.	Have.	Have not.		Have.	Have not.
Main Line Branches.	a	b	c	d	e	f	g	h	i		

NOTES.—*a* and *b*.—A single or double junction, or a single or double crossing on the level, to be considered as one case. On single lines of railway each connection with a portion of double line at loops, terminal stations, or junctions to be stated.

c.—Each individual instance of a siding joining a passenger line, whether at a station or elsewhere, not included in *a* or *b*, and each instance of connection between such siding and such passenger line, to be enumerated.

d.—Each crossover road, not included under *c*, connecting any two lines, to be considered one case.

e and *f*.—These numbers to represent the proportion of connections or crossings enumerated under *a*, *b*, *c*, *d*, the levers for working signals or points in connection with which have or have not been concentrated.

g and *h*.—These numbers to represent the proportions of connections or crossings enumerated under *a*, *b*, *c*, *d*, the levers for working signals and points in connection with which have or have not been interlocked.

i.—All cases in which safety points have or have not been applied to goods lines or goods sidings joining passenger lines, and enumerated under *b* and *c*, to be here stated.

36 & 37 Vict.
c. 76,
Schedule II.

SECOND SCHEDULE.

RAILWAY COMPANY.	Total Length of the Company's Railway open for passenger traffic, and of all other Railways open for passenger traffic which are worked by them.		Worked by Telegraph.				Worked by the Electric Telegraph, but not on either of the foregoing systems.			Single Lines of Railway (not included in the foregoing columns), (1.) Worked under the system in which only one engine in steam or two or more engines coupled together are allowed to be upon the single line or portions thereof at one and the same time; or (2.) Worked under the Train Porter system; or (3.) Worked under the Train Staff system.				Length of the Portions of Company's Railway and of other Railways worked by them for goods and mineral traffic only.	RE-MARKS.
	Consisting of two or more lines of rails only.	Consisting of a single line of rails only.	On the Absolute Block System.	Distance of Double Line.	Distance of Single Line worked by the Absolute Block System in addition to the Train Staff System.	On the Permissive Block System.	Distance of Double Line.	Distance of Single Line worked by the Electric Telegraph in addition to the Train Staff System.	Distance of Single Line worked by the Electric Telegraph in addition to the Train Staff System.	System as above. (1.) Distance.	Train Porter System. (2.) Distance.	Train Staff System. (3.) Distance.	m.	ch.	
	m. ch.	m. ch.	From to	m. ch.	m. ch.	From to	m. ch.	m. ch.	m. ch.	From to	m. ch.	m. ch.	m.	ch.	

BOARD OF TRADE ARBITRATION, ETC.
ACT, 1874.

37 & 38 VICT. c. 40.

An Act to amend the powers of the Board of Trade with respect to inquiries, arbitrations, appointments, and other matters under special Acts, and to amend the Regulation of Railways Act, 1873, so far as regards the reference of differences to the Railway Commissioners in lieu of Arbitrators. 37 & 38 Vict.
c. 40, ss. 1, 2.
[30th July, 1874.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as "The Board of Trade Arbitrations, &c. Act, 1874." Short title.

PART I.

Board of Trade Inquiries, &c.

2. Where, under the provisions of any special Act, passed either before or after the passing of this Act, the Board of Trade are required or authorised to sanction, approve, confirm, or determine any appointment, matter, or thing, or to make any order or to do any other act or thing for the purposes of such special Act, the Board of Trade may make such inquiry as they may think necessary for the purpose of enabling them to comply with such requisition or exercise such authority. Power of
Board of
Trade as to
inquiry.

Where an inquiry is held by the Board of Trade for the purposes of this section, or in pursuance of any general or special Act passed either before or after the passing of this Act, directing or authorising them to hold any inquiry, the Board of Trade may hold such inquiry by any person or persons (a) duly authorised in that behalf by an order of the Board of Trade ; and such inquiry, if so held, shall be deemed to be duly held.

(a) Sir Frederick Peel, Mr. Price, and Mr. Miller, Q.C., the Railway Commissioners, have held an inquiry for the Board of Trade under this section. See *In the matter of the Inhabitants of Launceston* ; and *In the matter of the Launceston and South Devon Railway Acts, 1862 and 1865*. Fifth Annual Report of the Railway Commissioners.

37 & 38 Vict.
c. 40, ss. 2—6.

Expenses con-
nected with
arbitration,
sanction, &c.

3. Where application is made in pursuance of any special Act passed either before or after the passing of this Act, to the Board of Trade to be arbitrators, or to appoint any arbitrator, referee, engineer, or other person, or to hold any inquiry, or to sanction, approve, confirm, or determine, any appointment, matter, or thing, or to make any order, or to do any other act or thing for the purposes of such special Act, all expenses incurred by the Board of Trade in relation to such application and the proceedings consequent thereon, shall, to such amount as the Board of Trade may certify by their order to be due, be defrayed by the parties to such application, and (subject to any provision contained in the said special Act) shall be defrayed by such of the parties as the Board of Trade may by order direct, or if so directed by an order of the Board of Trade, shall be paid as costs of the arbitration or reference.

The Board of Trade may, if they think fit, on or at any time after the making of the application, by order require the parties to the application, or any of them, to pay to the Board of Trade such sum as the Board of Trade think requisite for or on account of those expenses, or to give security to the satisfaction of the Board of Trade for the payment of those expenses on demand, and if such payment or security is not made or given, may refuse to act in pursuance of the application.

All expenses directed by an order of the Board of Trade or an award in pursuance of this section to be paid may be recovered in any court of competent jurisdiction as a debt, and if payable to the Board of Trade, as a debt to the Crown, and an order of the Board of Trade shall be conclusive evidence of the amount of such expenses.

Meaning of
"special
Act."

4. In this part of this Act the term "special Act" means a local or local and personal Act, or an Act of a local and personal nature, and includes a provisional order of the Board of Trade confirmed by Act of Parliament and a certificate granted by the Board of Trade under "The Railways Construction Facilities Act, 1864."

Order of
Board of
Trade may be
in writing.

An order of the Board of Trade for the purposes of this part of this Act, or of any such special Act as is referred to in this part of this Act, may be made by writing under the hand of the president or of one of the secretaries of the Board.

[5. Repealed by 46 & 47 Vict. c. 39.]

PART II.

Reference to Railway Commissioners.

Power of
Board of
Trade to ap-
point Railway
Commis-

6. Where any difference to which a railway company or canal company is a party is required or authorised under the provisions of any general or special Act passed either before or after the passing of this Act, to be referred to the arbitration of, or to be

determined or settled by, the Board of Trade, or some person or persons appointed by the Board of Trade, the Board of Trade may, if they think fit, by order in writing under the hand of the president or one of the secretaries of the Board, refer the matter for the decision of the railway commissioners, and appoint them arbitrators or umpire, as the case may be, and thereupon the commissioners for the time being shall have the same powers as if the matter had been referred to their decision in pursuance of "The Regulation of Railways Act, 1873," and also any further powers which the Board of Trade, or an arbitrator or arbitrators, or umpire, appointed by the Board of Trade, would have had for the purpose of the arbitration, if the difference had not been referred to the commissioners (a): Provided always, that this section shall not apply to any case in which application is made to the Board of Trade for the appointment of an umpire under the twenty-eighth section of "The Lands Clauses Consolidation Act, 1845."

37 & 38 Vict.
c. 40, ss. 7, 8.

sioners to be
arbitrators or
umpire.

(a) In one case the commissioners, after deciding some of the differences, said, "Any question which may arise between the companies in carrying into effect our decision in this arbitration, may, at the instance of either of them, be brought to us to determine, in the same manner as if the arbitration were still open" (*Bala & Dolgelly Ry. Co. v. Cambrian Ry. Co.*, 2 N. & Mac. 47, at p. 52). In the same case, the commissioners made the Gt. Western Railway Co. a party to the arbitration, although they were not referred to in the Order of Reference of the Board of Trade under this section (*ib.*).

Several cases have been heard by the Railway Commissioners under this section. These will be found reported in N. & Mac.'s Reports.

7. Where any difference is referred for the decision of the commissioners in pursuance of "The Regulation of Railways Act, 1873," as amended by this part of this Act, the commissioners shall have the same power by their decision of rescinding, varying, or adding to any award or other decision previously made by any arbitrator or arbitrators (including therein the Board of Trade) with reference to the same subject-matter as any arbitrator or arbitrators would have had if the difference had been referred to him or them.

Declaration
as to powers
of commis-
sioners in
arbitrations.

8. This part of this Act shall be construed as one with "The Regulation of Railways Act, 1873," and shall continue in force for the same time as that Act and no longer, but the expiration of this part of this Act shall not affect the validity of anything done before such expiration.

Duration, &c.
of part of Act,
and construc-
tion with 36 &
37 Vict. c. 48.
[Extended till
31st Dec.,
1882, by 42 &
43 Vict. c. 56.]

"The Regulation of Railways Act, 1873," together with this part of this Act, may be cited as "The Regulation of Railways Acts, 1873 and 1874."

THE EXPLOSIVES ACT, 1875.

38 VICT. c. 17.

38 Vict. c. 17, ss. 1—3. *An Act to amend the law with respect to manufacturing, keeping, selling, carrying, and importing gunpowder, nitro-glycerine, and other explosive substances.*

[14th June, 1875.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This Act may be cited as "The Explosives Act, 1875."

Commence-
ment of Act.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-six, in this Act referred to as the commencement of this Act; but any order in council, order, general rules, and byelaws, and any appointment to an office, may be made under this Act at any time after the passing thereof, but shall not take effect until the commencement of this Act.

Substances to
which this Act
applies.

3. This Act shall apply to gunpowder and other explosives as defined by this section.

The term "explosive" in this Act—

- (1.) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
- (2.) Includes fog-signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

5. Gunpowder shall not be kept at any place except as follows; that is to say,

38 Vict. c. 17,
ss. 5, 33.

- (1.) Except in the factory (either lawfully existing or licensed for the same under this Act) in which it is manufactured; or
- (2.) Except in a magazine or store for gunpowder either lawfully existing or licensed under this Act for keeping gunpowder; or
- (3.) Except in premises registered under this Act for keeping gunpowder:

Gunpowder (except for private use) to be kept only in existing or new magazine or store, or in registered premises.

Provided that this section shall not apply—

- (1.) To a person keeping for his private use and not for sale gunpowder to an amount not exceeding on the same premises thirty pounds; or
- (2.) To the keeping of any gunpowder by a carrier or other person for the purpose of conveyance, when the same is being conveyed or kept in accordance with the provisions of this Act with respect to the conveyance of gunpowder.

Any gunpowder kept in any place other than as above in this section mentioned shall be deemed to be kept in an unauthorised place.

Where any gunpowder is kept in an unauthorised place—

- (1.) All or any part of the gunpowder found in such place may be forfeited; and
- (2.) The occupier of such place, and also the owner of, or other person guilty of keeping the gunpowder, shall each be liable to a penalty not exceeding two shillings for every pound of gunpowder so kept.

Conveyance of Gunpowder.

33. The following general rules shall be observed with respect to the packing of gunpowder for conveyance:

General rules as to packing of gunpowder for conveyance.

1. The gunpowder, if not exceeding five pounds in amount, shall be contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping; and
2. The gunpowder, if exceeding five pounds in amount, shall be contained either in a single package or a double package. A single package shall be a box, barrel, or case of such strength, construction, and character as may be for the time being approved by the government inspector as being of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape. If the gunpowder is packed in a double package the inner package shall be a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and the outer package shall be a box, barrel, or case of wood or metal or other solid material, and shall be of

38 Vict. c. 17,
s. 35.

such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape; and

3. The interior of every package, whether single or double, shall be kept free from grit and otherwise clean; and
4. Every package, whether single or double, when actually used for the package of gunpowder, shall not be used for any other purpose; and
5. There shall not be any iron or steel in the construction of any such single package or inner or outer package, unless the same is effectually covered with tin, zinc, or other material; and
6. The amount of gunpowder in any single package, or if there is a double package in any one outer package, shall not exceed one hundred pounds, except with the consent of and under conditions approved by a government inspector; and
7. On the outermost package there shall be affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label or other mark.

In the event of any breach (by any act or default) of any general rule in this section, the gunpowder in respect of which the breach is committed may be forfeited, and the person guilty of such breach shall be liable to a penalty not exceeding twenty pounds.

The Secretary of State may from time to time make, and when made, repeal, alter, and add to, rules for the purpose of rescinding, altering, or adding to the general rules contained in this section, and the rules so made by the Secretary of State shall have the same effect as if they were enacted in this section.

Bye-laws by
railway and
canal com-
pany as to
conveyance,
loading, &c.,
of gunpowder.

35. Every railway company and every canal company over whose railway or canal any gunpowder is carried, or intended to be carried, shall, with the sanction of the Board of Trade, make bye-laws for regulating the conveyance, loading, and unloading of such gunpowder on the railway or canal of the company making the bye-laws, and in particular for declaring and regulating all or any of the following matters, in the case of such railway or canal; that is to say,

1. Determining the notice to be given of the intention to send gunpowder for conveyance as merchandise on the railway or canal; and
2. Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping gunpowder for conveyance and of giving notice by brands, labels, or otherwise of the nature of the package containing the gunpowder; and
3. Regulating the description and construction of carriages, ships, or boats to be used in the conveyance of gunpowder; and
4. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any

articles or substances, or in passenger trains, carriages, ships, or boats; and 38 Vict. c. 17,
s. 37.

5. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded, or conveyed at one time, or in one carriage, ship, or boat; and
6. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages, ships, and boats used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading, and unloading; and
7. Providing for the publication and supply of copies of the bye-laws; and
8. Enforcing the observance of this Act both by their servants and agents and also by other persons when on the canal or railway of such company; and
9. Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

Such bye-laws, when confirmed by the Board of Trade, shall apply to the railway, canal, agents, and servants of the company making the same, and to the persons using such railway or canal, or the premises connected therewith and occupied by or under the control of such company.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage, ship, or boat or train of carriages, ships, or boats in respect of which, the breach of bye-law has taken place.

37. The Secretary of State may from time to time make, and when made, rescind, alter, or add to, bye-laws for regulating the conveyance, loading, and unloading of gunpowder in any case in which bye-laws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters: that is to say, Bye-laws as to conveyance by road or otherwise, or loading of gunpowder.

1. Regulating the description and construction of carriages to be used in the conveyance of gunpowder as merchandise; and
2. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger carriages; and
3. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage; and
4. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages

38 Vict. c. 17,
s. 38.

used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading and unloading; and

5. Providing for the publication and supply of copies of the bye-laws; and
6. Generally for protecting, whether by means similar to those above mentioned or not, persons or property from danger; and
7. Adapting on good cause being shown the bye-laws in force under this section to the circumstances of any particular locality.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage in respect of which, the breach of bye-law has taken place.

For the purpose of any mode of conveyance which is not a conveyance by land this section shall be construed as if ship and boat were included in the term carriage.

Confirmation
and publica-
tion of bye-
laws.

38. Any recommendation to her Majesty in Council, any general rules with respect to packing, and any bye-laws which is or are proposed to be made under this Act by a Secretary of State or the Board of Trade shall, before being so made, be published in such manner as the Secretary of State or the Board of Trade, as the case may be, may direct as being in his or their opinion sufficient for giving information thereof to all local authorities, corporations, and persons interested.

The bye-laws framed by any railway company, canal company, or harbour authority under this Act shall, before being sanctioned by the Board of Trade, be published in such manner as may be directed by the Board of Trade, with a notice of the intention of such company or authority to apply for the confirmation thereof, and may be sanctioned by the Board of Trade with or without any omission, addition, or alteration, or may be disallowed.

Every such bye-law may be from time to time added to, altered, or rescinded by a bye-law made in like manner and with the like sanction as the original bye-law.

The Secretary of State or the Board of Trade, as the case may be, shall receive and consider any objections or suggestions made by any local authority, corporation, or person interested with respect to any recommendation, general rules, or bye-laws published in pursuance of this section, and may, if it seem fit, amend such recommendation, general rules, or bye-laws with a view of meeting such objections or suggestions without again publishing the same.

38 Vict. c. 17,
ss. 39, 40, 50,
53.

PART II.

LAW RELATING TO OTHER EXPLOSIVES.

Application of Part I. to other Explosives.

39. Subject to the provisions hereafter in this part of this Act contained, part one of this Act relating to gunpowder shall apply to every other description of explosive, in like manner as if those provisions were herein re-enacted with the substitution of that description of explosive for gunpowder.

Part. I.
relating to
gunpowder
applied to
other ex-
plosives.

40. The following modifications and additions shall be made in and to part one of this Act as applied to explosives other than gunpowder (*among others*):

Modification
of Part I. as
applied to
explosives
other than
gunpowder.

(3.) The Secretary of State may from time to time alter the general rules relating to packing contained in part one of this Act for the purpose of adapting the same to the packing of any explosive other than gunpowder.

50. A person shall not be required by this Act to take out a licence or to register any premises for the keeping of percussion caps, or safety-fuzes for blasting, or fog-signals, kept by any railway company for use on the railway of such company, or any prescribed explosive.

Keeping
without a
licence and
conveyance of
percussion
caps, &c.

It shall not be obligatory on any harbour authority, railway company, canal company, or occupier of a wharf, to make any bye-laws with respect to the conveyance, loading, or unloading of any explosives to which this section applies.

It shall be lawful for her Majesty, by Order in Council, to exempt any explosive to which this section applies, or any description thereof, from any other of the provisions of this Act, or to declare that a licence shall be required for the keeping of any explosive to which this section applies, or any description thereof, or that bye-laws shall be made with respect to the loading, unloading, and conveyance thereof.

PART III.

ADMINISTRATION OF LAW.

Government Supervision.—Inspection.

53. The Secretary of State may from time to time by order appoint any fit persons to be inspectors for the purposes of this Act, and assign them their duties, and award them such salaries as the Commissioners of her Majesty's Treasury may approve, and remove such inspectors; and any such inspector is referred to in this Act as a Government inspector.

Appointment
of govern-
ment
inspectors.

33 Vict. c. 17, ss. 58, 63. Every order appointing an inspector shall be published in the *London Gazette*.

Inspection by railway inspectors or inspectors of Board of Trade.

58. The Board of Trade may from time to time by order direct—
- (a.) Any person acting under the Board as an inspector of railways to inquire into the observance of this Act by any railway company or canal company, and generally to act with respect to any railway or canal as an inspector under this Act; or
 - (b.) Any person acting under the Board as an inspector or otherwise for the purposes of "The Merchant Shipping Act, 1854," or the Acts amending the same, to inquire into the observance of this Act in any harbour or in the case of any ship, and generally to act in such harbour and with respect to ships as an inspector under this Act.

The Board of Trade may revoke any such order; and each such inspector shall, while such order is in force, have for that purpose the same powers and authorities as he has under the Acts in pursuance of which he was originally appointed inspector, and also the powers and authorities of a government inspector under this Act.

Accidents.

Notice to be given of accidents connected with explosive.

63. Whenever there occurs any accident by explosion or by fire in or about or in connection with any factory, magazine, or store, or any accident by explosion or by fire causing loss of life or personal injury in or about or in connection with any registered premises, the occupier of such factory, magazine, store, or premises shall forthwith send or cause to be sent notice of such accident and of the loss of life or personal injury (if any) occasioned thereby to the Secretary of State. A notice of any accident of which notice is sent in pursuance of this section to a government inspector need not be sent to any inspector or sub-inspector of factories or any inspector of mines.

Where in, about, or in connexion with any carriage, ship, or boat, either conveying an explosive, or on or from which an explosive is being loaded or unloaded, there occurs any accident by explosion or by fire causing loss of life or personal injury, or if the amount of explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder half a ton, and in the case of any other explosive the prescribed amount, any accident by explosion or by fire, the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein or being loaded or unloaded therefrom, or one of them, shall forthwith send or cause to be sent notice of such accident, and of the loss of life or personal injury, if any, occasioned thereby, to the Secretary of State.

Every such occupier, owner, or master as aforesaid who fails to comply with this section shall be liable to a penalty not exceeding twenty pounds.

66. The Secretary of State may direct an inquiry to be made by a Government inspector into the cause of any accident which is caused by an explosion or fire either in connexion with any explosive, or of which notice is required by this Act to be given to the Secretary of State, and where it appears to the Secretary of State, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Secretary of State may by order direct such investigation to be held, and with respect to such inquiry and investigation the following provisions shall have effect:—

**38 Vict. c. 17,
s. 68.**

*Inquiry into
accidents and
formal in-
vestigation in
serious cases.*

- (1.) The Secretary of State may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist the Government inspector in holding the formal investigation, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of a Government inspector or any other assessor or assessors named in the order:
- (2.) The persons holding any such formal investigation (in this section referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned:
- (3.) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of a Government inspector under this Act, and in addition the following powers; namely,
 - (a.) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose:
 - (b.) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make:
 - (c.) They may require the production of all books, papers, and documents which they consider important for the said purpose:
 - (d.) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination:
 - (e.) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the

38 Vict. c. 17,
s. 73.

superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses :

- (4.) The Government inspector making an inquiry into any accident and the court holding an investigation of any accident under this section shall make a report to the Secretary of State, stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the inquiry or investigation which he or they think right to make to the Secretary of State, and the Secretary of State shall cause every such report to be made public in such manner as he thinks expedient :
- (5.) All expenses incurred in and about an inquiry or investigation under this section shall be deemed to be part of the expenses of the Secretary of State in carrying this Act into execution : and
- (6.) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this Act, or prevents or impedes such court in the execution of their duty, shall for every such offence incur a penalty not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document, not exceeding ten pounds during every day that such failure continues.

General Power of Search.

Search for explosive when in place in contravention of this Act, or offence being committed with respect to it.

73. Where any of the following officers,—namely, any Government inspector, or any constable or any officer of the local authority, if such constable or officer is specially authorised either (a) by a warrant of a justice (which warrant such justice may grant upon reasonable ground being assigned on oath), or (b) (where it appears to a superintendent or other officer of police of equal or superior rank, or to a Government inspector, that the case is one of emergency and that the delay in obtaining a warrant would be likely to endanger life), by a written order from such superintendent, officer, or inspector,—has reasonable cause to believe that any offence has been or is being committed with respect to an explosive in any place (whether a building or not, or a carriage, boat, or ship), or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place, such officer may, on producing, if demanded, in the case of a Government inspector, a copy of his appointment, and in the case of any other officer, his authority, enter at any time, and if needs be by force, and as well on Sunday as on other days, the said place, and every part thereof, and examine the same, and search for explosives therein, and take

samples of any explosive and ingredient of an explosive therein, and any substance reasonably supposed to be an explosive, or such ingredient which may be found therein. 38 Vict. c. 17,
s. 74.

Any person who, by himself or by others, fails to admit into any place occupied by or under the control of such person any officer demanding to enter in pursuance of this section, or in any way obstructs such officer in the execution of his duty under this section, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place.

Where a constable or officer of the local authority specially authorised by written authority other than a warrant of a justice of the peace, enters and searches as above provided, a special report in writing of every act done by such constable or officer in pursuance of that authority, and of the grounds on which it is done, shall be forthwith sent by the person by whom or under whose authority it was done to the Secretary of State.

74. Where any of the following officers, namely, any Government inspector, or any constable, or any officer of the local authority, has reasonable cause to believe that any explosive or ingredient of an explosive or substance found by him is liable to be forfeited under this Act, he may seize and detain the same until some court of summary jurisdiction has determined whether the same is or is not so liable to be forfeited, and with respect thereto the following provisions shall have effect:—

Seizure and
detention of
explosives
liable to
forfeiture.

- (1.) The officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat, or ship) to detain the same in such place or in any place under the control of such occupier, or may remove it in such manner and to such place as will in his opinion least endanger the public safety, and there detain it, and may, where the matter appears to him to be urgent and fraught with serious public danger, and he is a Government inspector, or is authorised by an order from a Government inspector or a justice of the peace, or from a superintendent or other officer of police of equal or superior rank, cause the same to be destroyed or otherwise rendered harmless; but before destroying or rendering harmless the same he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive, or having the same under his control at the time of the seizure; and any such occupier who by himself or by others fails to keep the same when he is required in pursuance of this section to detain it, and any such occupier or other person who, except with the authority of the officer seizing the same, or of a Government inspector, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with the

38 Vict. c. 17,
s. 75.

same while so detained, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place :

- (2.) The proceedings before a court of summary jurisdiction for determining whether the same is or is not liable to forfeiture shall be commenced as soon as practicable after the seizure ; and
- (3.) The receptacles containing the same may be seized, detained, and removed in like manner as the contents thereof ; and
- (4.) The officer seizing the same may use for the purposes of the removal and detention thereof any ship, boat, or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts, and accoutrements belonging to or drawing or provided for drawing such ship, boat, or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined, in case of dispute, by a court of summary jurisdiction, and to be recovered in like manner as penalties under this Act ; and
- (5.) The same shall, so far as practicable, be kept and conveyed in accordance with this Act, and with all due precaution to prevent accident, but the person seizing, removing, detaining, keeping, or conveying the same shall not be liable to any penalty, punishment, or forfeiture under this or any other Act, or to any damages, for keeping or conveying the same, so that he use all such due precautions as aforesaid ; and
- (6.) The officer seizing the same, or dealing with the same in pursuance of this section, shall not be liable to damages or otherwise in respect of such seizure or dealing, or any act incidental to or consequential thereon, unless it is proved that he made such seizure without reasonable cause, or that he caused damage to the article seized by some wilful neglect or default.

Inspection of
wharf, car-
riage, boat,
&c. with
explosives in
transitu.

75. Any of the following officers, namely, any Government inspector under this Act, any chief officer of police, and any superior officer appointed for the purposes of this Act where the justices in petty sessions are the local authority, by the court of quarter sessions to which such justices belong, and in the case of any other local authority by the local authority itself, may, for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading, and importation of an explosive are complied with, enter, inspect, and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship, or boat of any carrier or other person who conveys goods for hire, or of the occupier of any factory, magazine, or store, or of the importer of any explosive, on or in which wharf, carriage, ship, or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily

obstruct the work or business of any such carrier, person, occupier, or importer. 38 Vict. c. 17,
ss. 76, 77.

Any such officer, if he find any offence being committed under this Act in any such wharf, carriage, ship, or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive, as if it were liable to forfeiture.

Any officer above mentioned in this section, and any officer of police, or officer of the local authority who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading, or unloading any explosive, and that the case is one of emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop, and enter, inspect, and examine such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger, in like manner as if such explosive were liable to forfeiture.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorised by a search warrant granted under this Act, and any person failing to admit or obstructing such officer shall be liable to the same penalty.

76. When a Government inspector, constable, or officer of the local authority in pursuance of this Act takes samples of any explosive, or ingredient, or substance, he shall pay for or tender payment for the same to such amount as he considers to be the market value thereof, and the occupier of the place in which, or the owner of the bulk from which, the sample was taken, may recover any excess of the real value over the amount so paid or tendered, and any amount so tendered, from the inspector, constable, or officer taking the sample as a debt in the county court of the district within which the sample was taken.

Payment for
samples of
explosives.

PART IV.

SUPPLEMENTAL PROVISIONS, LEGAL PROCEEDINGS, EXEMPTIONS, AND DEFINITIONS.

Supplemental Provisions.

77. Any person who enters without permission or otherwise trespasses upon any factory, magazine, or store, or the land immediately adjoining thereto which is occupied by the occupier of such factory, magazine, or store, or on any wharf for which bye-laws are made by the occupier thereof under this Act, shall for every such offence, if not otherwise punishable, be liable to a

Penalty on
and removal
of trespassers.

38 Vict. c. 17,
ss. 78—81.

penalty not exceeding five pounds, and may be forthwith removed from such factory, magazine, store, land, or wharf, by any constable, or by the occupier of such factory, magazine, store, or wharf, or any agent or servant of or other person authorised by such occupier.

Any person other than the occupier of or person employed in or about any factory, magazine, or store who is found committing any act which tends to cause explosion or fire in or about such factory, magazine, or store, shall be liable to a penalty not exceeding fifty pounds.

The occupier of any such factory, magazine, store, or wharf shall post up in some conspicuous place or places a notice or notices warning all persons of their liability to penalties under this section; but the absence of any such notice or notices shall not exempt a person from a penalty under this section.

Arrest with-
out warrant
of persons
committing
dangerous
offences.

78. Any person who is found committing any act for which he is liable to a penalty under this Act, and which tends to cause explosion or fire in or about any factory, magazine, store, railway, canal, harbour, or wharf, or any carriage, ship, or boat, may be apprehended without a warrant by a constable, or an officer of the local authority, or by the occupier of or the agent or servant of or other person authorised by the occupier of such factory, magazine, store, or wharf, or by any agent or servant of or other person authorised by the railway or canal company or harbour authority, and be removed from the place at which he is arrested, and conveyed as soon as conveniently may be before a court of summary jurisdiction.

Imprisonment
for wilful act
or neglect
endangering
life or limb.

79. Where any person is guilty of any offence which under this Act is punishable by a pecuniary penalty only, and which, in the opinion of the court that tries the case, was reasonably calculated to endanger the safety of or to cause serious personal injury to any of the public or the persons employed in or about any factory, magazine, store, or registered premises, or any harbour, railway, canal, wharf, ship, boat, carriage, or place where such offence is committed, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding six months.

Penalty for
throwing
fireworks in
thoroughfare.

80. If any person throw, cast, or fire any fireworks in or into any highway, street, thoroughfare, or public place, he shall be liable to a penalty not exceeding five pounds.

Forgery and
falsification of
documents.

81. Every person who forges or counterfeits any licence, certificate, document, or plan granted or required in pursuance or for the purposes of this Act, or gives or signs any such document or plan which is to his knowledge false in any material particular, or

wilfully makes use of any such forged, counterfeit, or false licence, certificate, document, or plan, shall be liable to imprisonment, with or without hard labour, for a term not exceeding two years. **38 Vict. c. 17, ss. 82—85.**

82. Every person who, without due authority, pulls down, injures, or defaces any notice, copy of rules, or document, when affixed in pursuance of this Act, or of the special rules, shall be liable to a penalty not exceeding two pounds. **Punishment for defacing notices.**

83. Her Majesty may from time to time make orders in council for doing anything which is in this Act expressed to be authorised, directed, regulated, prescribed, or done by order in council. **Provisions as to Orders in Council and orders of Secretary of State.**

Every order in council or order of the Secretary of State which purports to be made in pursuance of this Act shall be presumed to have been duly made and to be within the powers of this Act, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Every order in council made in pursuance of this Act shall take effect as if it were enacted in this Act, and shall be published in the *London Gazette*, and shall be laid before both Houses of Parliament, within one month after it is made, if Parliament be then sitting, or if not, within one month after the commencement of the then next session of Parliament.

Her Majesty may by order in council, and a Secretary of State may by order, from time to time revoke, add to, or alter any previous orders in council or orders of the Secretary of State, as the case may be, under this Act.

84. All bye-laws, notices, and documents directed by this Act to be published or advertised shall, save as otherwise provided by this Act, be published in the place which such notices and documents affect, by advertisement in some newspapers circulating generally in such place, or by placards or handbills, or in such manner as the Secretary of State may from time to time direct as being in his opinion sufficient for giving information thereof to all persons interested. **Publication of bye-laws, notices, &c.**

85. All orders, permissions, notices, and documents issued or given by the Secretary of State for the purposes of this Act, and all notices under this Act, shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served, given, or sent by, on, or to a Government inspector or Secretary of State may be sent by post, by a prepaid letter, and if sent by post shall be deemed to have been served, given, and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service, giving, or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put into the post. **Requisitions, notices, &c. to be in writing, &c. and how to be served.**

All notices and documents directed by or required for the

38 Vict. c. 17,
ss. 86, 87.

purposes of this Act, to be given or sent to the Secretary of State shall, if sent to a Government inspector under this Act, be deemed to have been sent to the Secretary of State.

All notices and documents directed by or required for the purposes of this Act to be given or sent to a local authority may be sent, by post or otherwise, to the clerk or office of the local authority, or delivered to some person employed by them for the purposes of this Act.

Construction
of enactments
referring to
powers of
searching for
gunpowder.

86. Where any enactment refers to any power of searching for gunpowder, or to any provisions of an Act of the twelfth year of King George the Third, chapter sixty-one, or of any Act repealed by this Act relative to the search for gunpowder, such enactment shall be deemed to refer to the provisions of this Act with respect to the search for and seizure, detention, and removal of an explosive by a Government inspector.

Legal Proceedings.

Exemption of
occupier from
penalty upon
proof of
another being
real offender.

87. Where any offence under this Act for which the occupier of any factory, magazine, store or registered premises is liable to a penalty or forfeiture has in fact been committed by some other person, such other person shall be liable to a penalty not exceeding twenty pounds.

Where such occupier is charged with an offence so committed by some other person, the occupier shall be exempt from any penalty and forfeiture upon proving that he had supplied proper means and issued proper orders for the observance and used due diligence to enforce the observance of this Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender be alive, that he has taken all practicable means in his power to prosecute such offender to conviction.

Where a Government inspector, or an officer of the local authority, or the local authority, is satisfied, before instituting a proceeding for any offence under this Act against an occupier, that such occupier, if such proceeding were instituted against him, would, under the foregoing provisions of this section, upon taking all practicable means in his power to prosecute the actual offender to conviction, be exempt from any penalty and forfeiture, and the occupier gives all facilities in his power for proceeding against and convicting the person whom the inspector, officer, or local authority believes to have actually committed the offence, the inspector, officer, or local authority shall proceed against that person in the first instance, without first proceeding against the occupier.

The occupier or other defendant, when charged in respect of any offence by another person, may, if he think fit, be sworn and examined as an ordinary witness in the case.

Where any offence under this Act for which any warehouseman, carrier, occupier of a wharf or dock, or owner or master of any

ship, boat, or carriage, is liable to a penalty or forfeiture, has in fact been committed by some other person, this section shall apply in like manner as if the warehouseman, carrier, occupier of a wharf or dock, owner or master were such an occupier as above in this section mentioned.

38 Vict. c. 17,
ss. 88—91.

88. Where a carrier or owner or master of a ship or boat is prevented from complying with this Act by the wilful act, neglect, or default of the consignor or consignee of the explosive, or other person, or by the improper refusal of the consignee or other person to accept delivery of the explosive, such consignor, consignee, or other person who is guilty of such wilful act, neglect, default, or refusal shall be liable to the same penalty to which the carrier, owner, or master is liable for a breach of this Act, and his conviction shall exempt the carrier, owner, or master from any penalty or forfeiture under this Act.

Exemption of
carrier and
owner and
master of ship
where con-
signee, &c.
in fault.

89. Where a court before whom a person is convicted of an offence against this Act has power to forfeit any explosive owned by or found in the possession or under the control of such person, the court may, if it think it just and expedient, in lieu of forfeiting such explosive, impose upon such person, in addition to any other penalty or punishment, a penalty not exceeding such sum as appears to the court to be the value of the explosive so liable to be forfeited.

Supplemental
provisions as
to forfeiture
of explosive.

Where any explosive, or ingredient of an explosive, is alleged to be liable under this Act to be forfeited, any indictment, information, or complaint may be laid against the owner of such explosive or ingredient, for the purpose only of enforcing such forfeiture, and where the owner is unknown, or cannot be found, a court may cause a notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such explosive will be forfeited, and at such time and place the court, after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive or ingredient to be forfeited.

90. For all the purposes of this Act—

- (1.) Any harbour, tidal water, or inland water which runs between or abuts on or forms the boundary of the jurisdiction of two or more courts shall be deemed to be wholly within the jurisdiction of each of such courts; and
- (2.) Any tidal water not included in the foregoing descriptions, and within the territorial jurisdiction of her Majesty, and adjacent to or surrounding any part of the shore of the United Kingdom, and any pier, jetty, mole, or work extending into the same, shall be deemed to form part of the shore to which such water or part of the sea is adjacent, or which it surrounds.

Jurisdiction
in tidal
waters or on
boundaries.

91. Every offence under this Act may be prosecuted, and every penalty under this Act may be recovered, and all explosives and

Prosecution
of offences
either sum-

38 Vict. c. 17,
ss. 92—96.

marily or on
indictment.

ingredients liable to be forfeited under this Act may be forfeited either on indictment or before a court of summary jurisdiction, in manner directed by the Summary Jurisdiction Acts.

Provided that the penalty imposed by the court of summary jurisdiction shall not exceed one hundred pounds exclusive of costs, and exclusive of any forfeiture or penalty in lieu of forfeiture, and the term of imprisonment imposed by any such court shall not exceed one month.

All costs and money directed to be recovered as penalties may be recovered before a court of summary jurisdiction in manner directed by the Summary Jurisdiction Acts.

A court of summary jurisdiction may by order prohibit a person from doing any act for doing which such person has twice been convicted under this Act, and may order any person disobeying such summary order to be imprisoned for any period not exceeding six months.

Power of
offender in
certain cases
to elect to be
tried on
indictment,
and not by
summary
jurisdiction.

92. Where a person is accused before a court of summary jurisdiction of any offence under this Act, the penalty for which offence as assigned by this Act, exclusive of forfeiture, exceeds one hundred pounds, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

Appeal to
quarter
sessions.

93. If any party feels aggrieved by any summary order made by a court of summary jurisdiction under this Act, or by any order or conviction made by a court of summary jurisdiction in determining any complaint or information under this Act, by which order or conviction the sum adjudged to be paid, including costs, and including the value of any forfeiture, exceeds twenty pounds, the party so aggrieved may appeal therefrom to quarter sessions, in manner provided with respect to an appeal to quarter sessions by section one hundred and ten of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six.

24 & 25 Vict.
c. 96.

Constitution
of court.

94. The court of summary jurisdiction, when hearing and determining an information or complaint, in respect of any offence under this Act, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Distress of
ship.

95. Where the owner or master of a ship or boat is adjudged to pay a penalty for an offence committed with or in relation to

such ship or boat, the court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship or boat and her tackle.

38 Vict. c. 17,
s. 96.

96. All penalties imposed in pursuance of this Act by a court of summary jurisdiction upon the prosecution of a Government inspector shall, notwithstanding anything in any other Act, be paid into the receipt of her Majesty's exchequer, in such manner as the treasury may from time to time direct, and be carried to the consolidated fund.

Application
of penalties
and disposal
of forfeitures.

Any explosive or ingredient forfeited in pursuance of this Act may be sold, destroyed, or otherwise disposed of in such manner as the court declaring the forfeiture, or the Secretary of State, may direct, and the proceeds of any such sale or disposal shall be paid, applied, and accounted for in like manner as penalties under this Act.

The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

The provisions of part three of this Act with respect to an explosive, or ingredient of an explosive, seized in pursuance of this Act, and to the officer seizing, removing, detaining, keeping, or conveying, or otherwise dealing with the same, shall apply to any explosive and ingredient declared by any court to be forfeited, and to the officer removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of the same.

The court declaring the forfeiture, or the Secretary of State directing the sale or other disposal of any forfeited explosive or ingredient, and the receptacles thereof, may require the owner of such explosive or ingredient to permit the use of any ship, boat, or carriage containing such explosive or ingredient for the purpose of such sale or disposal, upon payment of a reasonable compensation for the same, to be determined in case of dispute by a court of summary jurisdiction; and where the explosive or ingredient is directed to be destroyed, the owner and the person having possession of such explosive or ingredient, and the owner and master of the ship, boat, or carriage containing the same, or some or one of them, shall destroy the same accordingly, and if the court or Secretary of State so order, the ship, boat, or carriage may be detained until the same is so destroyed; and if the Secretary of State is satisfied that default has been made in complying with any such direction by him or by a court, and that the detention of the ship, boat, or carriage will not secure the safety of the public, and that it is impracticable, having regard to the safety of the public or of the persons employed in such destruction, to effect the same without using such ship, boat, or carriage, or otherwise dealing with such ship, boat, or carriage, in like manner as if it were a receptacle for an explosive forfeited under this Act, the Secretary of State may direct such ship, boat, and carriage, or any of them, to be, and the same may accordingly be, so used or dealt with.

38 Vict. c. 17,
ss. 104, 106,
108.

Definitions.

Extension of
definition of
explosive to
other ex-
plosive
substances.

104. Her Majesty may, by order in council, declare that any substance which appears to her Majesty to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the order) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

Definition
and classifica-
tion of
explosives by
Order in
Council.

106. It shall be lawful for her Majesty from time to time, by order in council, to define, for the purposes of this Act, the composition, quality, and character of any explosive, and to classify explosives.

Where the composition, quality, or character of any explosive has been defined by an order in council, any article alleged to be such explosive which differs from such definition in composition, quality, or character, whether by reason of deterioration or otherwise, shall not be deemed, for the purposes of this Act, to be the explosive so defined.

General
definitions.

108. In this Act, unless the context otherwise requires (*among other things*)—

The expression “this Act” includes any licence, certificate, bye-law, regulation, rule, and order granted or made in pursuance of this Act :

The expression “existing” means existing at the passing of this Act :

The expression “person” includes a body corporate :

The expression “carrier” includes all persons carrying goods or passengers for hire by land or water :

The expression “railway company” means any person or body of persons, corporate or unincorporate, being the owner or lessee or owners or lessees of or working any railway worked by steam or otherwise than by animal power in the United Kingdom, constructed or carried on under the powers of any Act of Parliament and used for public traffic, and every building, station, wharf, dock, and place which belong to or are under the control of a railway company, are in the other portions of this Act included in the expression “railway” :

The expression “wharf” includes any quay, landing-place, siding, or other place at which goods are landed, loaded, or unloaded :

The expression “carriage” includes any carriage, waggon, cart, truck, vehicle, or other means of conveying goods or passengers by land, in whatever manner the same may be propelled.

ORDER IN COUNCIL, No. 1.

EXPLOSIVES ACT, 1875 (38 VICT. c. 17).

ORDER IN COUNCIL, CLASSIFYING EXPLOSIVES.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT,

The 5th day of August, 1875.

Present: THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by the 106th section of "The Explosives Act, 1875," it is enacted that it shall be lawful for her Majesty from time to time, by Order in Council, to define for the purposes of the said Act, the composition, quality, and character of any explosive, and to classify explosives.

Now, therefore, in pursuance of the above-mentioned provision of the said Act, her Majesty is pleased, by and with the advice of her Privy Council, to order as follows:—

For the purposes of the said Act explosives shall be divided into seven classes, as follows:—

Class 1	.	.	.	.	.	.	Gunpowder.
Class 2	.	.	.	.	.	.	Nitrate mixture.
Class 3	.	.	.	.	.	.	Nitro compound.
Class 4	.	.	.	.	.	.	Chlorate mixture.
Class 5	.	.	.	.	.	.	Fulminate.
Class 6	.	.	.	.	.	.	Ammunition.
Class 7	.	.	.	.	.	.	Firework.

And when an explosive falls within the description of more than one class, it shall be deemed to belong exclusively to the latest of the classes within the description of which it falls.

CLASS 1.—*Gunpowder Class.*

The term "gunpowder" means exclusively gunpowder ordinarily so-called.

CLASS 2.—*Nitrate-mixture Class.*

The term "nitrate mixture" means any preparation, other than gunpowder ordinarily so-called, formed by the mechanical mixture of a nitrate with any form of carbon or with any carbonaceous substance not possessed of explosive properties, whether sulphur be or be not added to such preparation, and whether such preparation be or be not mechanically mixed with any other non-explosive substance.

38 Viet. c. 17.
Order in
Council.

The nitrate-mixture class comprises such explosives as—
Pyrolithe,
Pudrolithe,
Poudre saxifragine,
and any preparation coming within the above definition.

CLASS 3.—*Nitro-compound Class.*

The term “nitro-compound” means any chemical compound possessed of explosive properties, or capable of combining with metals to form an explosive compound, which is produced by the chemical action of nitric acid (whether mixed or not with sulphuric acid) or of a nitrate mixed with sulphuric acid upon any carbonaceous substance, whether such compound is mechanically mixed with other substances or not.

The nitro-compound class has two divisions.

Division 1 comprises such explosives as—

Nitro-glycerine,
Dynamite,
Lithofracteur,
Dualine,
Glyoxiline,
Methylic nitrate,

and any chemical compound or mechanically mixed preparation which consists either wholly or partly of nitro-glycerine or of some other liquid nitro-compound.

Division 2 comprises such explosives as—

Gun-cotton, ordinarily so-called,
Gun-paper,
Xyloidine,
Gun-sawdust,
Nitrated gun-cotton,
Cotton gun-powder,
Schultz's powder,
Nitro-manite,
Picrates,
Picric powder,

and any nitro-compound as before defined, which is not comprised in the first division.

CLASS 4.—*Chlorate-mixture Class.*

The term “chlorate mixture” means any explosive containing a chlorate.

The chlorate-mixture class has two divisions.

Division 1 comprises such explosives as—

Horsley's blasting powder,
Brain's blasting powder,

and any chlorate preparation which consists partly of nitro-glycerine or of some other liquid nitro-compound.

Division 2 comprises such explosives as—

Horsley's original blasting powder,

Erhardt's powder,

Reveley's powder,

Hochstadter's blasting charges,

Reichen's blasting charges,

Teutonite,

Chlorated gun-cotton,

and any chlorate-mixture as before defined, which is not comprised in the first division.

38 Vict. c. 17.
Order in
Council.

CLASS 5.—Fulminate Class.

The term "fulminate" means any chemical compound or mechanical mixture, whether included in the foregoing classes or not, which, from its great susceptibility to detonation, is suitable for employment in percussion caps or any other appliances for developing detonation, or which, from its extreme sensibility to explosion, and from its great instability (that is to say, readiness to undergo decomposition from very slight exciting causes), is especially dangerous.

This class consists of two divisions.

Division 1 comprises such compounds as the fulminates of silver and of mercury, and preparations of these substances, such as are used in percussion caps; and any preparation consisting of a mixture of a chlorate with phosphorus, or certain descriptions of phosphorus compounds, with or without the addition of carbonaceous matter, and any preparation consisting of a mixture of a chlorate with sulphur, or with a sulphuret, with or without carbonaceous matter.

Division 2 comprises such substances as the chloride and the iodide of nitrogen, fulminating gold and silver, diazobenzol, and the nitrate of diazobenzol.

CLASS 6.—Ammunition Class.

The term "ammunition" means an explosive of any of the foregoing classes when enclosed in any case or contrivance, or otherwise adapted or prepared so as to form a cartridge charge for small arms, cannon, or any other weapon, or for blasting, or to form any safety or other fuze for blasting or for shells, or to form any tube for firing explosives, or to form a percussion cap, a detonator, a fog signal, a shell, a torpedo, a war rocket, or other contrivance other than a firework.

The term "percussion cap" does not include a detonator.

The term "detonator" means a capsule or case which is of such strength and construction, and contains an explosive of the fulminate-explosive class in such quantity that the explosion of one capsule or case will communicate the explosion to other like capsules or cases.

38 Vict. c. 17.
Order in
Council.

The term "safety fuze" means a fuze for blasting which burns and does not explode, and which does not contain its own means of ignition, and which is of such strength and construction and contains an explosive in such quantity that the burning of such fuze will not communicate laterally with other like fuzes.

The ammunition class has three divisions.

Division 1 comprises exclusively—

Safety cartridges,
Safety fuzes for blasting,
Railway fog signals,
Percussion caps.

Division 2 comprises any ammunition as before defined which does not contain its own means of ignition, and is not included in Division 1, such as—

Cartridges for small-arms, which are not safety cartridges,
Cartridges and charges for cannon, shells, mines, blasting, or other like purposes,
Shells and torpedoes containing any explosives,
Fuzes for blasting which are not safety fuzes,
Fuzes for shells,
Tubes for firing explosives,
War rockets,

which do not contain their own means of ignition.

Division 3 comprises any ammunition as before defined which contains its own means of ignition, and is not included in Division 1, such as—

Detonators,
Cartridges for small-arms, which are not safety cartridges,
Fuzes for blasting, which are not safety fuzes,
Fuzes for shells,
Tubes for firing explosives,

which do not contain their own means of ignition.

By ammunition containing its own means of ignition is meant ammunition having an arrangement, whether attached to it or forming part of it, which is adapted to explode or fire the same by friction or percussion.

CLASS 7.—*Firework Class.*

The term "firework" comprises firework composition and manufactured fireworks.

Division 1.—The term "firework composition" means any chemical compound or mechanically mixed preparation of an explosive or inflammable nature which is used for the purpose of making manufactured fireworks, and is not included in the former classes of explosives, and also any coloured fire composition.

Division 2.—The term "manufactured firework" means any explosive of the foregoing classes, and any firework composition, when such explosive or composition is enclosed in any case or

contrivance, or is otherwise manufactured so as to form a squib, cracker, serpent, rocket (other than a war-rocket), maroon, star, lance, wheel, Chinese fire, Roman candle, or other article adapted for the production of pyrotechnic effects or pyrotechnic signals.

38 Vict. c. 17.
Order in
Council.

C. L. PEEL.

ORDER IN COUNCIL, No. 2.

EXPLOSIVES ACT, 1875 (38 VICT. c. 17).

ORDER IN COUNCIL MAKING GENERAL RULES FOR
FACTORIES FOR EXPLOSIVES OTHER THAN GUN-
POWDER.

AT THE COURT AT WINDSOR,

27th day of November, 1875.

Present :—THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by Part I. (section 10) of The Explosives Act, 1875 (hereinafter referred to as the Act), it is provided that in every gunpowder factory the general rules thereafter following shall be observed :

And whereas by Part II. (section 39) of the Act it is declared that, subject to the provisions subsequently in such Part II. contained, Part I. of the Act relating to gunpowder shall apply to every other description of explosive in like manner as if the provisions of such Part I. were re-enacted in such Part II., with the substitution of that description of explosive for gunpowder :

And whereas by Part II. (section 40, sub-section 2) of the Act it is provided that in the application of Part I. to factories for explosive other than gunpowder, the general rules prescribed by Order in Council shall be substituted for the general rules in Part I. of the Act relating to gunpowder factories :

Now, therefore, in pursuance of the above-mentioned provision of the Act, her Majesty is pleased, by and with the advice of her Privy Council, to order and prescribe that in every factory for explosive other than gunpowder (not being a small firework factory licensed by the local authority) the following general rules shall be observed (*among others*) :—

10. Any carriage, boat, or other receptacle in which explosive, or any ingredient thereof which by itself is possessed of explosive properties, or which when mixed with any other ingredient or article also present in such carriage, boat, or receptacle is capable of forming an explosive mixture or an explosive compound, is conveyed from one building to another in a factory, or from any such building to any place

38 Vict. c. 17.
Order in
Council.

outside of such factory, or from one part of a factory to any other part or to a place outside of such factory, shall, **unless** specially exempted by the licence, or by an order of a Government inspector, be constructed without any exposed iron or steel in the interior thereof, and shall convey only the explosive and ingredients, and shall be closed or otherwise properly covered over; and the explosive and ingredients shall be so conveyed with all due diligence, and with such precaution and in such manner as will sufficiently guard against any accidental ignition or explosion; provided that so much of this rule as applies to the exclusion of iron or steel shall not be obligatory in the case of a carriage, boat, or other receptacle in which no explosive other than explosive of the 1st division of the 6th (ammunition) class is conveyed.

Wherever in this Order an explosive is distinguished as belonging to a particular class or division of a class, reference is made to the classification of explosives contained in an Order in Council made in pursuance of section 106 of the Act.

C. L. PEEL.

ORDER IN COUNCIL, No. 3.

EXPLOSIVES ACT, 1875 (38 VICT. c. 17).

ORDER IN COUNCIL RELATING TO MAGAZINES FOR
EXPLOSIVES OTHER THAN GUNPOWDER, WHETHER
WITH OR WITHOUT GUNPOWDER.

AT THE COURT AT WINDSOR,

The 27th day of November, 1875.

Present: THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

IN pursuance of the provisions hereinafter set forth of "The Explosives Act, 1875" (hereinafter referred to as the Act), her Majesty is pleased, by and with the advice of her Privy Council, to order and prescribe, with respect to magazines for keeping explosives other than gunpowder, whether with or without gunpowder, as follows:—

1. Whereas by Part I. (section 10) of the Act it is provided that

in every gunpowder magazine the general rules thereafter following shall be observed :

38 Vict. c. 17.
Order in
Council.

And whereas by Part II. (section 39) of the Act it is declared that, subject to the provisions subsequently in such Part II. contained, Part I. of the Act relating to gunpowder shall apply to every other description of explosive in like manner as if the provisions of such Part I. were re-enacted in such Part II., with the substitution of that description of explosive for gunpowder :

And whereas by Part II. (section 40, sub-section 2) of the Act it is provided that in the application of Part I. to magazines for explosive other than gunpowder the general rules prescribed by Order in Council shall be substituted for the general rules in Part I. of the Act relating to gunpowder magazines :

And whereas by Part II. (section 40, sub-section 7) of the Act it is provided that where any explosive other than gunpowder is allowed to be kept in the same magazine with gunpowder, the general rules prescribed by Order in Council shall be observed instead of the general rules in Part I. of the Act :

Now, therefore, in pursuance of the above-mentioned provisions of the Act, her Majesty is pleased, by and with the advice of her Privy Council, to order and prescribe that in every magazine for explosives other than gunpowder, whether with or without gunpowder, the following general rules shall be observed (*among others*) :—

- (11.) Any carriage, boat, or other receptacle in which explosive is conveyed from one building to another in a magazine, or from any such building to any place outside of such magazine, or from one part of a magazine to any place outside of such magazine, shall, unless specially exempted by the licence or by an order of a Government inspector, be constructed without any exposed iron or steel in the interior thereof, and shall contain only the explosive, and shall be closed or otherwise properly covered over; and the explosive shall be so conveyed with all due diligence, and with such precautions and in such manner as will sufficiently guard against any accidental ignition or explosion; provided that so much of this rule as applies to the exclusion of iron or steel shall not be obligatory in the case of a carriage, boat, or other receptacle in which no explosive other than explosive of the 1st division of the 6th (ammunition) class is conveyed.

4. Wherever in this Order an explosive is distinguished as belonging to a particular class or division of a class, reference is made to the classification of explosives contained in an Order in Council made in pursuance of section 106 of the Act.

C. L. PEEL.

38 Vict. c. 17.
Order in
Council.

ORDER IN COUNCIL, No. 11.

EXPLOSIVES ACT, 1875 (38 VICT. c. 17).

ORDER IN COUNCIL RESPECTING NOTICE TO BE GIVEN
OF ACCIDENTS CONNECTED WITH THE CONVEY-
ANCE OF EXPLOSIVES OTHER THAN GUNPOWDER.

AT THE COURT AT WINDSOR,

The 27th day of November, 1875.

Present: THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section 63 of "The Explosives Act, 1875," it is provided that where, in, about, or in connection with any carriage, ship, or boat, either conveying an explosive, or in or from which an explosive is being loaded or unloaded, there occurs any accident, by explosion or by fire, causing loss of life or personal injury; or if the amount of explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder half a ton, and in the case of any other explosive the amount prescribed by Order in Council, any accident by explosion or by fire; the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein or being loaded or unloaded therefrom shall forthwith send or cause to be sent to the Secretary of State, notice of such accident, and of the loss of life or personal injury, if any, occasioned thereby:

Now, therefore, in pursuance of the above-mentioned provision of the said Act, her Majesty is pleased, by and with the advice of her Privy Council, to order and prescribe, that in the case of any other explosive, whether with or without gunpowder, the amount, in the aggregate, shall be 200 pounds; provided that nothing in this Order shall apply where no explosive is conveyed, loaded or unloaded, other than ammunition of the 1st division of the 6th class (as defined in the classification of explosives contained in an Order in Council made in pursuance of section 106 of the said Act).

C. L. PEEL.

RAILWAY COMPANY.

THE EXPLOSIVES ACT, 1875.

BYELAWS made with the sanction of the BOARD OF TRADE for the REGULATION of the LOADING, UNLOADING, and CONVEYANCE of EXPLOSIVES on the RAILWAYS of the RAILWAY COMPANY (hereinafter called the Company), made under and in pursuance of the Explosives Act, 1875 (38 Vict. c. 17), and every other power and authority vested in the company.

(a.) The words and expressions used in the following byelaws shall respectively have and include the several meanings assigned to them or defined in "The Explosives Act, 1875," and in the Order of her Majesty in Council, dated the 5th of August, 1875, made in pursuance of section 106 of the said Act, unless the subject or context otherwise requires.

(b.) The term "explosive" means and shall include and apply to every article and substance mentioned as or defined to be an explosive in and by the 3rd section of the said Act, or the said Order in Council, or any Order in Council which may hereafter be made in pursuance of the said Act.

(c.) Where by any of these byelaws any time is prescribed or allowed for giving any notice to the company, or for the doing of any act by the company, such time shall be computed exclusively of Sunday, Christmas Day, Good Friday, and any statutory Bank Holiday.

1. No carriage containing any explosive which the company shall, by any notice or regulation for the time being in force, notify that they will not receive, forward or carry, shall be delivered to the company for conveyance, or be brought, sent, or forwarded to or upon any railway of the company.

2. No person shall send to the company any consignment of explosive, unless he has given to the company forty-eight hours previous notice in writing of his intention to send such consignment, and stating the true name, description, and quantity of the explosive proposed to be conveyed, and his own name and address, and also the name and address of the proposed consignee, and has had an intimation in writing from the company that they are prepared to receive such consignment.

3. Consignments of explosive shall be sent to the company's forwarding station, and shall be received by their servants, only at such times during the hours of daylight, that is to say, between sunrise and sunset, as the company may appoint; and every consignment and package containing any explosive proposed to be conveyed on any railway of the company shall, immediately on the arrival thereof at the company's station, wharf, or railway, be delivered to and be received by the company's servants authorised to receive dangerous goods, and by no other person whatsoever.

28 Vict. c. 17.
Byelaws.

4. No explosive shall be loaded or unloaded on the company's premises by the consignor or consignee thereof, or their servants, except between sunrise and sunset.

5. Safety cartridges and percussion caps and safety fuze (for blasting), may be conveyed by passenger train, provided all due precautions be taken by the sender for the prevention of accident by fire or explosion; also railway fog signals for the company's own use; but, except as aforesaid, no explosive whatever shall be conveyed by passenger train.

6. Gunpowder, or any explosive made with gunpowder, included in the 2nd division of the 6th (ammunition) class of explosives, as classified by the said Order in Council of the 5th of August, 1875, if packed in metallic cylinders of a pattern approved by the company, and similar in construction and security to those used by Government for the conveyance of small quantities of gunpowder by railway, may be conveyed along with ordinary goods traffic in a carriage not containing any article or substance liable to cause or communicate fire or explosion.

7. No explosive of the 5th (fulminate) class, nor any explosive of the 6th (ammunition) class, containing its own means of ignition, nor any explosive of the 7th (firework) class, shall be conveyed in the same carriage with any explosive not of the class and division to which it belongs, unless it be sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

8. There shall not be conveyed in the same carriage with any explosive, any lucifer matches, fuzes, pipe-lights, acids, naphtha, paraffin, petroleum, to which "The Petroleum Act, 1871," or any Act repealing or amending the same, applies, or any other volatile spirit or substance liable to give off an inflammable vapour at a temperature below 100° Fahrenheit, or liable to spontaneous ignition, or to cause or communicate fire or explosion.

9. On each side of every carriage containing any explosive there shall be affixed in conspicuous characters, by means of a securely attached label or otherwise, the word "explosive," or the name of the explosive with the word "explosive," except when containing gunpowder or ammunition packed in metallic cylinders, as provided for in the 6th of these byelaws; and every carriage containing explosive shall be placed as far as practicable from the engine attached to the train.

10. Not more than five carriages containing explosive shall be loaded or unloaded at or on any railway station or wharf of the company, or be attached to or conveyed by any one train at any one time; and the quantity of explosive to be contained or loaded in any one such carriage at any one time shall not exceed 10,000 pounds in weight; provided always, that the quantity of explosive

to be contained or loaded in any one such carriage shall not exceed one ton in weight, unless the carriage shall be a covered van. 38 Vict. c. 17.
Byelaws.

11. If the explosive to be conveyed is not effectually protected from accident by fire from without, by being placed in the interior of a carriage which is enclosed on all sides with wood or metal, then the explosive shall be completely covered with painted cloth, tarpaulin, or other suitable material, so as to effectually protect it against communication of fire.

12. There shall not be any iron or steel in the interior of the portion of the carriage where the explosive is deposited, unless the same be covered either permanently or temporarily with leather, wood, cloth, sheet-lead, or other suitable material.

13. When the stowing of explosive in any carriage, or the loading or unloading of any explosive is undertaken by any person other than the company, all due precautions shall be taken by such person by careful stowing and loading and unloading and otherwise, to prevent and secure such explosive from being brought into contact with or endangered by any other article or substance liable to cause fire or explosion.

14. In loading or unloading any explosive, the casks and packages containing the same shall, as far as practicable, be passed from hand to hand, and not rolled upon the ground, and in no case shall any such casks or packages be rolled, unless hides, cloths or sheets have been previously laid down on the platform or ground over which the same are to be rolled. Casks or packages containing explosive shall not be thrown or dropped down, but shall be carefully deposited and stowed.

15. No person while employed in loading, stowing in any carriage, or unloading any explosive included in classes 1, 2, 3, 4, or 5 of the classification of explosives as classified by the said Order in Council, dated August 5th, 1875, shall wear boots or shoes with steel or iron nails, steel or iron heels, or tips of any kind, or have about his person any lucifer match, explosive, or means of striking a light; and all persons employed in the loading, stowing, or unloading of any explosive shall, while such loading, stowing, or unloading are going on, abstain from smoking.

16. While the loading, unloading, or conveyance of explosive is going on, all persons engaged in such loading, unloading, or conveyance shall observe all due precautions for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the explosive so being loaded, unloaded, or conveyed, and shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of loading, unloading, or conveyance of such explosive, or of any other article carried therewith, and for preventing any other

28 Vict. c. 17. person from committing any such act; and such other person who, after being warned, commits any such act shall be deemed to commit a breach of these byelaws.
Byelaws.

17. The loading or unloading of explosive into or out of any carriage, when once begun, shall be proceeded with with all due diligence until the same is completed.

18. Packages containing any explosive must be removed by the consignee from the station, wharf, or depôt of the company to which they have been conveyed, as soon as practicable and with all due diligence after arrival; and if not removed within twelve hours after arrival, the packages and contents may be forthwith sold by the company, or otherwise disposed of as they think fit; and such packages shall in the meantime, and until such removal, sale, or disposal, be completely covered over with painted cloth, tarpaulin, or other suitable material.

19. The company may refuse to receive, forward, carry, or allow to be brought or carried upon their railway any carriage or package which they suspect to be packed or sent, or to contain any article or thing packed or sent in contravention of the said Act, or of any of these byelaws, or not in accordance therewith, and in case any carriage or package which the company suspect to be so packed or sent, or to contain any such article or thing as aforesaid, shall be upon any railway of the company, the company may open, or require such carriage or package to be opened, to ascertain the fact.

20. These byelaws are supplemental to "The Explosives Act, 1875," and in the event of any breach (by any act or default) of any of them, or any attempt to commit such breach, the following penalties and consequences will be incurred and ensue; that is to say—

- (1.) The explosive in respect of which, or being in the carriage, or train of carriages, in respect of which the offence is committed, may, unless the offence be committed by the company, be forfeited to the company.
- (2.) The person committing the offence shall be liable to a penalty not exceeding 20*l.* for each offence, and to a further penalty of 10*l.* for each day during which the offence continues; and the owner of the carriage, or train of carriages, in respect of which, or containing the explosive in respect of which, the offence is committed, the person in charge of such carriage, and the owner of such explosive, shall each be liable to a similar penalty, if he was a party or contributed to such offence, or neglected to supply the proper means, or to issue proper orders for the observance, or has not used due diligence to enforce the observance of these byelaws.

21. Copies of these byelaws shall be exhibited in a conspicuous place at the stations on the company's railways, and may be obtained on application to the secretary of the company. 38 Vict. c. 17.
Byelaws.

22. The above byelaws (with the exception of byelaw No. 5) do not apply to small packages of percussion caps, safety cartridges, or gunpowder, carried by passengers for private use and not for sale, not exceeding in the whole for one passenger at any one time, 5,000 percussion caps, and 1,000 safety cartridges in number, and three pounds in weight of gunpowder, provided such gunpowder is contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping.

Given under the common seal of the
this day of 187 .

Secretary.



The Board of Trade hereby signify their sanction of the above byelaws.

Signed by order of the Board of Trade this day
of 187 .

An Assistant-Secretary to the Board of Trade.

NOTICE.

The company hereby give notice that they are not common carriers of explosives, and do not undertake the carriage of any explosive except on special conditions signed by the sender thereof, or by the person delivering the same to the company for carriage.

THE RAILWAY COMPANIES ACT, 1875.

38 & 39 VICT. c. 31.

**38 & 39 Vict.
c. 31, s. 1.** *An Act to make perpetual Section Four of the Railway Companies Act, 1867, and Section Four of the Railway Companies (Scotland) Act, 1867. [29th June, 1875.]*

**30 & 31 Vict.
c. 127.** WHEREAS by section 4 of the Railway Companies Act, 1867, restrictions were placed on the liability of the rolling stock and plant of railway companies in England and Ireland to be taken in execution at law or in equity at any time after the passing of that Act and before the first day of September one thousand eight hundred and sixty-eight :

**30 & 31 Vict.
c. 126.** And whereas by section 4 of the Railway Companies (Scotland) Act, 1867, restrictions were placed on the liability of rolling stock and plant of railway companies in Scotland to be attached by diligence, at any time after the passing of that Act and before the first day of September one thousand eight hundred and sixty-eight :

**31 & 32 Vict.
c. 79.** And whereas by the Railway Companies Act, 1868, it was enacted that the said sections should be read and have effect as if the first day of September one thousand eight hundred and seventy were therein mentioned instead of the first day of September one thousand eight hundred and sixty-eight :

And whereas the said sections have since been continued until the thirty-first day of December one thousand eight hundred and seventy-five, and it is expedient that the same should be made perpetual :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

**30 & 31 Vict.
c. 127, s. 4,
and c. 126,
s. 4, made
perpetual.** 1. The Railway Companies Act, 1868, and also the words "and before the first day of September one thousand eight hundred and sixty-eight" in section 4 of the Railway Companies Act, 1867, and in section 4 of the Railway Companies (Scotland) Act, 1867, are hereby repealed, and the said sections shall be perpetual.

This Act is now repealed by 46 & 47 Vict. c. 39.

THE CONTINUOUS BRAKES ACT, 1878.

41 VICT. c. 20.

An Act to provide for returns respecting Continuous Brakes in use on Passenger Trains on Railways. 41 Vict. c. 20,
ss. 1, 2.

[17th June, 1878.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as The Railway Returns (Continuous Brakes) Act, 1878. Short title.

2. Every railway company shall twice in every year make to the Board of Trade returns respecting the use of continuous brakes on the passenger trains running on the railways worked by such company. Returns to be made twice a year by railway companies to Board of Trade respecting continuous brakes.

The returns shall contain the particulars and be in the form specified in the schedule to this Act, or shall contain such other particulars and be in such other form as the Board of Trade from time to time prescribe; and the Board of Trade may in any case dispense with any part of the returns where they deem the same inapplicable.

The returns shall be made for the six months ending on the last day of December and the last day of June in every year, or on such other days as the Board of Trade from time to time direct, and shall be made within fourteen days after the expiration of each six months.

Every return shall be signed by the officer of the company responsible for the correctness of the return, and by the chairman or deputy chairman of the directors of the company, or where there are no directors by the individual or one of the individuals bound to make the return.

Any railway company who fail to comply with this section shall be liable on summary conviction before a court of summary jurisdiction to a fine not exceeding five pounds for every day during which the default continues.

Any person who makes or is privy to the making of a return under this Act which is to his knowledge false in any particular shall be liable on summary conviction before a court of summary jurisdiction to a fine not exceeding fifty pounds.

Expressions in this Act have the same meaning as they have in the Regulation of Railways Act, 1871. 34 & 35 Vict. c. 78.

Schedule.

SCHEDULE.

RETURN for the six months ending on the _____ day of _____, 18____, of the amount and description of continuous brake power in use on the passenger trains running on the railways worked by the _____ Railway Company.

(See the Forms approved by the Board of Trade following this Schedule.)

FORMS OF RETURN.

Name of Railway Company.	Name and Description of Brake or Brakes adopted by the Company and in use on Passenger Trains on Lines worked by them.	(1.) Whether the Brakes are instantaneous in action and capable of being applied by engine driver and guards. (2.) Whether self-acting. (3.) Whether capable of being applied to every vehicle of a train. (4.) Whether in regular use in daily working. (5.) Whether the materials employed are of a durable character, easily maintained and kept in order.	Amount of Stock fitted with Continuous Brakes.		Amount of Stock fitted during the above Six Months.		Special rules under which the Continuous Brakes are worked.
			Number of Engines and Tenders used for Passenger Trains.	Number of Vehicles.	Number of Engines and Tenders used for Passenger Trains.	Number of Passenger Carriages and other Vehicles used for Passenger Trains.	

The Railway Returns (Continuous Brakes) Act, 1878.

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RETURN for the six months ending on the _____ day of _____, 18 _____, Schedule.
of all cases in which continuous brakes have, from any cause, failed to act
when required to be brought into action on any railway worked by the
Railway Company.

Name of Railway Company.	Name or description of Brake which failed in being brought into use.	Date of Failure.	Particulars of circumstances relating to the causes of failure.

RETURN for the six months ending on the _____ day of _____, 18 _____,
of all cases in which continuous brakes have not been used on any passenger
train running on a railway worked by the _____ Railway
Company.

Name of Railway Company.	Name of Railway worked by Company on which Passenger Train ran without Continuous Brake.	Number of Passenger Trains so run.

Form.

FORMS OF RETURN No. 1, AS PRESCRIBED BY THE BOARD OF TRADE.

No. 1.—RETURN for the Six Months ending on the 31st day of December, 1886, of the Amount and Description of Continuous Brake Power in use on the Passenger Trains running on the Railways worked by the

Railway Company.

Name of Railway Company.	Name and Description of Brake or Brakes adopted by the Company and in use on Passenger Trains on Lines worked by them.	<p>(1.) Whether the brakes are instantaneous in action and capable of being applied by engine driver and guards.</p> <p>(2.) Whether self-acting.</p> <p>(3.) Whether capable of being applied to every vehicle of a train.</p> <p>(4.) Whether in regular use in daily working.</p> <p>(5.) Whether the materials employed are of a durable character, easily maintained and kept in order.</p>	<p>Amount of Stock fitted with Continuous Brakes.</p> <table border="1"> <tr> <th data-bbox="404 860 633 997" rowspan="2">Number of Engines and Tenders (used for Passenger Trains) in which the continuous brakes can be applied to the wheels.</th> <th data-bbox="404 729 633 860" rowspan="2">Number of Engines and Tenders (used for Passenger Trains) fitted only with apparatus for applying the brake.</th> <th colspan="3" data-bbox="404 607 633 729">NUMBER OF VEHICLES.</th> </tr> <tr> <th data-bbox="437 475 633 607">Passenger Carriages.</th> <th data-bbox="437 347 633 475">Other Vehicles used for Passenger Trains.</th> <th data-bbox="437 214 633 347"></th> </tr> </table>				Number of Engines and Tenders (used for Passenger Trains) in which the continuous brakes can be applied to the wheels.	Number of Engines and Tenders (used for Passenger Trains) fitted only with apparatus for applying the brake.	NUMBER OF VEHICLES.			Passenger Carriages.	Other Vehicles used for Passenger Trains.	
Number of Engines and Tenders (used for Passenger Trains) in which the continuous brakes can be applied to the wheels.	Number of Engines and Tenders (used for Passenger Trains) fitted only with apparatus for applying the brake.	NUMBER OF VEHICLES.												
		Passenger Carriages.	Other Vehicles used for Passenger Trains.											
(Each description of connection of continuous brake to be given.)	(Replies to these questions to be given for each description of brake, and also state whether the brakes are used for every stoppage.)													

(The amount of stock fitted with each description of brakes to be given.)

(Continued on p. 755.)

Form.

FORMS OF RETURN No. 1, AS PRESCRIBED BY THE BOARD OF TRADE.

No. 1.—RETURN for the Six Months ending on the 31st day of December, 1886, of the Amount and Description of Continuous Brake Power in use on the Passenger Trains running on the Railways worked by the Railway Company.

Amount of Stock not fitted with Continuous Brakes.		Amount of Stock fitted during the above Six months.			Special Rules under which the Continuous Brakes are worked.
Number of Engines and Tenders used for Passenger Trains.	Number of Passenger Carriages and other Vehicles used for Passenger Trains.	Number of Engines and Tenders (used for Passenger Trains) fitted only with apparatus for applying the brake.	Number of Passenger Carriages and other Vehicles used for Passenger Trains.		
			Fitted with brake gear complete.	Fitted only with chains or pipes and connections for connecting the brake.	
(The amount of stock for each description of brake to be given.)					

(Continued from p. 754.)
2 c 3

*The Railway Returns (Continuous Brakes) Act, 1878.***Forms.****FORMS OF RETURNS, Nos. 2 AND 3, AS PRESCRIBED BY THE BOARD OF TRADE.**

No. 2.—RETURN for the Six Months ending on the 31st day of December, 1886, of all instances in which Continuous Brakes have failed to act when required to be brought into action or have caused delay in the working of the trains, on any railway worked by the Railway Company.

1	2	3	4	5
Name of Railway Company.	Name or Description of Brake which failed or caused delay in any of the instances asked for in Column 4.	Date of Failure.	Instances under the three follow- ing heads separately of:— 1. Failure or partial failure to act when required in case of an accident to a train, or a colli- sion between trains being im- minent. 2. Failure or partial failure to act under ordinary circum- stances to stop a train when required. <i>In both of the above instances (1 & 2) the cause to be fully stated.</i> 3. Delay in the working of trains in consequence of defects in, or improper action of the Brakes, distinguishing whether they arose from neglect or inexper- ience of servants, or failure of machinery or material. <i>The number affixed to each car- riage on which the brake failed, or which caused the delay, to be stated in each circumstance; and also the locality where the failure occurred.</i>	Number of miles run by Trains fitted with each description of Continuous Brake.

NOTE.—If there were no failures, or no instances of delay, it should be so stated.

No. 3.—RETURN for the Six Months ending on the 31st day of December, 1886, of the number of miles run by Passenger Trains not fitted with Continuous Brakes on any railway worked by the Railway Company.

Name of Railway Company.	Name of Railway worked by Company on which Passenger Train ran without Continuous Brake.	Number of miles run by Passenger Trains without Continuous Brakes.
	<i>(Insert in this column the name of the Company's railway and of any railway worked by them.)</i>	

NOTE.—Should Continuous Brakes not be in use on the Company's railway, or on the railways worked by them, it will still be necessary to give the amount of stock not fitted, and the number of miles run by trains without Continuous Brakes required by Returns Nos. 1 and 3.

THE CONTAGIOUS DISEASES (ANIMALS)
ACT, 1878.

41 & 42 Vict.
c. 74, s. 33.

41 & 42 VICT. c. 74.

33.—(1) Every railway company shall make a provision, to the satisfaction of the Privy Council, of water and food, or either of them, at such stations as the Privy Council from time to time, by general or specific description, direct, for animals carried, or about to be or having been carried, on the railway of the company.

(2) The water and food so provided, or either of them, shall be supplied to any such animal by the company carrying it, on the request of the consignor or of any person in charge thereof.

(3) As regards water, if, in the case of any animal, such a request is not made, so that the animal remains without a supply of water for twenty-four consecutive hours, the consignor and the person in charge of the animal shall each be guilty of an offence against this Act, and it shall lie on the person charged to prove such a request and the time within which the animal had a supply of water.

(4) But the Privy Council may from time to time, if they think fit, by order prescribe any other period, not less than twelve hours, instead of the period of twenty-four hours aforesaid, generally, or in respect of any particular kind of animals.

(5) The company supplying water or food under this section may make in respect thereof such reasonable charges (if any) as the Privy Council by order approve, in addition to such charges as they are for the time being authorised to make in respect of the carriage of animals. The amount of those additional charges accrued due in respect of any animal shall be a debt from the consignor and from the consignee thereof to the company, and shall be recoverable by the company from either of them, with costs, by proceedings in any court of competent jurisdiction. The company shall have a lien for the amount thereof on the animal in respect whereof the same accrued due, and on any other animal at any time consigned by or to the same consignor or consignee to be carried by the company.

The Order of 1886 under this Act will be found immediately before the Appendix, *post*.

THE EMPLOYERS' LIABILITY ACT, 1880.

43 & 44 VICT. c. 42.

43 & 44 Vict.
c. 42, s. 1.

An Act to extend and regulate the Liability of Employers to make compensation for Personal Injuries suffered by Workmen in their service. [7th September, 1880.]

43 & 44 Vict.
c. 42.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Amendment
of law.

1. Where after the commencement of this Act personal injury is caused to a workman

- (1.) By reason of any (*a*) defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or
 - (2.) By reason of the negligence of any person in the service of the employer who has any superintendence (*b*) entrusted to him whilst in the exercise of such superintendence ; or
 - (3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform (*c*), and did conform, where such injury resulted from his having so conformed ; or
 - (4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or
 - (5.) By reason of the negligence of any person in the service of the employer who has the charge or control (*d*) of any signal, points, locomotive engine, or train upon a railway,
- the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

For the law as to the liability of a master for injuries to his servant as it stood before this Act, see the notes to section 89 of the Railways Clauses Act, 1845.

A workman may contract not to claim compensation under the Act (*Griffiths v. Earl of Dudley*, 9 Q. B. D. 357). 43 & 44 Vict. c. 42, s. 2.

The effect of the Act is to deprive the employer in the cases mentioned in this section of the defence that the injury was caused by the negligence of a fellow-workman. But the employer may set up contributory negligence by the workman, and he may rely upon the defence *volenti non fit injuria* (*Weblin v. Ballard*, 17 Q. B. D. 122; *Thomas v. Quartermaine*, 18 Q. B. D. 685). Contract to exclude Act.

(a) The test whether machinery or plant is defective or not, is whether it is fit or unfit for the purpose to which it is applied (*Heske v. Samuelson*, 12 Q. B. D. 30; *Cripps v. Judge*, 13 Q. B. D. 583; *Paley v. Garrett*, 16 Q. B. D. 52; *Thomas v. Quartermaine*, 17 Q. B. D. 414; 18 Q. B. D. 685). Defect in condition.

An obstruction placed in a roadway is not a defect in the condition of the way within sub-section (1) (*M'Giffin v. Palmer's Co.*, 10 Q. B. D. 5).

The works referred to are works completed, and not works in course of construction (*Howe v. Finch*, 17 Q. B. D. 187).

(b) As to a person having superintendence entrusted to him (see *Shaffers v. General Steam Navigation Co.*, 10 Q. B. D. 356). Person having superintendence.

The employer will be liable for the negligence of the superintendent, though when negligent he may be voluntarily assisting in manual labour (*Osborne v. Jackson*, 11 Q. B. D. 619).

(c) Express orders are not necessary to bring the case within this sub-section. It is enough if the injured person is acting under the general direction of another servant (*Millicard v. Midland Ry. Co.*, 14 Q. B. D. 68). Orders.

(d) A workman whose duty it is to clean, oil, and adjust the points has not "charge or control" of the points within sub-section (5) (*Gibbs v. G. W. Ry. Co.*, 12 Q. B. D. 208). Having charge or control.

A "capstan man," whose duty it is to move trucks by setting the capstan in motion, has been held to be a person having control of a train (*Cox v. G. N. Ry. Co.*, 19 Q. B. D. 106).

"Railway" in sub-section 5, includes a temporary railway laid down by a contractor for the construction of the works (*Doughty v. Firbank*, 10 Q. B. D. 358).

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say, Exceptions to amendment of law.

- (1) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.
- (2) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.
- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

**43 & 44 Vict.
c. 42, ss. 3—6.**

**Limit of sum
recoverable as
compensa-
tion.**

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceeding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

**Limit of time
for recovery
of compensa-
tion.**

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death, the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

The notice must be in writing (*Keen v. Millwall Dock Co.*, 8 Q. B. D. 482).
See sect. 7 as to what the notice must contain.

**Money pay-
able under
penalty to be
deducted
from com-
pensation
under Act.**

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

**Trial of
actions.**

6.—(1.) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2.) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in

the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

43 & 44 Vict.
c. 42, s. 7.

"County court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

40 & 41 Vict.
c. 50.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

The power of removal will be exercised only in special cases.

Power to
remove.

A defect in the notice under the Act, and the existence of an action in the High Court with which the plaintiff wishes to consolidate the County Court action, are not sufficient grounds for removing the County Court action (*Munday v. Thames Co.*, 10 Q. B. D. 59).

Sect. 39 of the County Courts Act, 1856, which enables a defendant upon certain terms to stay an action of tort in the County Court, where the claim is for more than 5*l.*, does not apply to an action under this Act (*R. v. Judge of City of London Court*, 14 Q. B. D. 818, 905).

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

Mode of
serving
notice of
injury.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

The notice under this section must be a notice in writing (*Moyle v. Jenkins*, 8 Q. B. D. 116; *Keen v. Millwall Dock Co.*, 8 Q. B. D. 482).

Notice in
writing.

The omission of the cause and date of the injury does not render the notice invalid if the employer is not prejudiced in his defence by the omission or mislead (*Stone v. Hyde*, 9 Q. B. D. 76; *Carter v. Drysdale*, 12 Q. B. D. 91. See *Clarkson v. Muirgrave*, 9 Q. B. D. 386).

- 43 & 44 Vict.**
c. 42,
ss. 8—10.
Definitions.
- 8.** For the purposes of this Act, unless the context otherwise requires,—
The expression “person who has superintendence entrusted to him” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:
The expression “employer” includes a body of persons corporate or unincorporate:
The expression “workman” means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.
- 38 & 39 Vict.**
c. 90.
- This does not include an omnibus conductor engaged at daily wages, or the driver of a tramcar (*Morgan v. London General Omnibus Co.*, 13 Q. B. D. 832; *Cook v. N. Metropolitan Tramways Co.*, 18 Q. B. D. 683. See, too, *Jackson v. Hill*, 13 Q. B. D. 618).
- Commence-
ment of Act.**
- 9.** This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.
- Short title.**
Continued till
Dec. 31, 1888.
50 & 51 Vict.
c. 63.
- 10.** This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

45 VICT. c. 15.

An Act to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common. 45 Vict. c. 15,
ss. 1, 2.
[19th June, 1882.]

WHEREAS under the provisions of the Lands Clauses Consolidation Act, 1845, and of railway and other special Acts of Parliament, money is directed or authorised to be paid to a committee as compensation for the extinction of commonable rights or for lands, being common lands or in the nature thereof, the right to the soil of which belongs to the commoners: 8 & 9 Vict.
c. 18.

And by the Lands Clauses Consolidation Act, 1845, and by the Inclosure Act, 1852, and the Inclosure Act, 1854, certain powers of apportioning and otherwise dealing with such money are conferred upon any such committee and upon the Inclosure Commissioners for England and Wales (hereinafter called the commissioners), but such powers are found in practice to be insufficient, and money paid by way of compensation as aforesaid is often in consequence useless to the persons interested therein: 15 & 16 Vict.
c. 79.
17 & 18 Vict.
c. 97.

And whereas it is expedient to give such powers of dealing with such compensation money as are hereinafter specified, but such powers cannot be conferred without the sanction of Parliament:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Commonable Rights Compensation Act, 1882. Short title.

2.—(1.) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners as compensation for the extinguishment of commonable or other rights or for lands Application
of compensa-
tion money
for common
lands.

45 Vict. c. 15,
s. 2.

being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the commissioners to call a meeting of the persons interested in such money to consider the application thereof, and the commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways—

- (a.) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid;
- (b.) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a Provisional Order for the regulation, of such common land, or of any application to Parliament for a Private Bill or otherwise for the preservation and management of such common land as an open space;
- (c.) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same;
- (d.) In the purchase of additional land to be used as common land;
- (e.) In the purchase of land to be used as a recreation ground for the neighbourhood;

8 & 9 Vict.
c. 118, &c.

and any such resolution shall bind the minority and all absent parties, and the commissioners shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons, or the legal personal representative of such survivor, shall, upon service of any such order of the commissioners as aforesaid upon them or any of them or any person on their behalf as the commissioners may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(2.) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the commissioners, pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said commissioners by such majorities as aforesaid.

(3.) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the commissioners under their seal, and upon such confirmation the land shall vest in the remaining and the newly appointed trustees without any conveyance. 45 Vict. c. 15,
ss. 3-5.

(4.) The commissioners shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made by them under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5.) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the schedule to this Act for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or of any other Act of Parliament, to any local authority as specified in the schedule to this Act, or to the churchwardens and overseers of a parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively. Application
of compensa-
tion money
for recreation
grounds and
field gardens.

42 & 43 Vict.
c. 37.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the commissioners in manner provided by this Act, by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the commissioners under their seal, be deemed to have been lawfully made under the provisions of this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions in this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land. Provision for
cases where
money paid
by way of
compensation
has already
been applied
in the manner
authorised by
this Act.

5. Copies of all orders made by the commissioners under this Act shall be deposited and kept in like manner as copies of an Deposit of
orders.

45 Vict. c. 15, award are by the Inclosure Act, 1845, directed to be deposited and
s. 6. kept.

**Exception of
the New
Forest.**

6. This Act shall not extend to the New Forest.

SCHEDULE.

Situation of Land.	Local Authority.
Within the Metropolis	The Metropolitan Board of Works.
Not within the Metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the Metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

THE CHEAP TRAINS ACT, 1883.

46 & 47 VICT. c. 34.

An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the conveyance of the Queen's Forces by Railway. 46 & 47 Vict.
c. 34, ss. 1—3.

[20th August, 1883.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Cheap Trains Act, 1883.

Short title.

2. After the commencement of this Act the duties now payable in respect of passengers conveyed for hire on a railway shall, subject to the provisions of this Act, be varied as follows:

Abolition of passenger duty for cheap trains, and reduction on urban traffic.

(1.) Fares not exceeding the rate of one penny a mile shall be exempt from duty; but fares for return or periodical tickets shall be exempt from duty only where the ordinary fare for the single journey does not exceed that rate.

(2.) Duty shall be payable at the rate of two per cent. on fares exceeding the rate of one penny a mile for conveyance between railway stations within one urban district certified so to be in manner provided in this section.

(3.) Where the Board of Trade are satisfied that any two or more railway stations are within an area which has a continuous urban as distinguished from a rural or suburban character, and contains a population of not less than one hundred thousand inhabitants, the Board of Trade may certify that those stations are within one urban district for the purposes of this Act. The Board of Trade may from time to time and at any time rescind or vary any certificate given by them under this section.

3.—(1.) If at any time the Board of Trade have reason to believe—

Provision for proper third-class accommodation and workmen's trains.

(a.) That upon any railway or part of a railway, or upon any line or system of railways, whether belonging to one

46 & 47 Vict.
c. 34, s. 4.

company or to two or more companies, which forms a continuous means of communication, a due and sufficient proportion of the accommodation provided by such company or companies is not provided for passengers at fares not exceeding the rate of one penny a mile; or

- (b.) That upon any railway carrying passengers proper and sufficient workmen's trains are not provided for workmen going to and returning from their work at such fares and at such times between six o'clock in the evening and eight o'clock in morning as appear to the Board of Trade to be reasonable,

then and in either case the Board of Trade may make such inquiry as they think necessary, or may, if required by the company or any of the companies concerned, refer the matter for the decision of the Railway Commissioners, who shall have the same power therein as if it had been referred to their decision in pursuance of the Regulation of Railways Act, 1873.

(2.) If on an inquiry under this Act it is proved to the satisfaction of the Board of Trade or the Railway Commissioners, as the case may be, that such proper and sufficient accommodation or workmen's trains as aforesaid are not provided by any railway company, the Board of Trade or the Railway Commissioners, as the case may be, may order the company to provide such accommodation or workmen's trains at such fares as, having regard to the circumstances, may appear to the said Board or the Commissioners to be reasonable.

(3.) If any company on whom an order is made under this Act to provide proper and sufficient accommodation or workmen's trains refuse, or, at any time after the expiration of one month from the making thereof, neglect to comply with the order, the Board of Trade shall issue a certificate to that effect to the Commissioners of Inland Revenue, and after the date of such certificate the company shall lose the benefit of this Act and be liable to pay in respect of the fares received after such date the same amount of passenger duty as would be payable if the passenger duty had not been varied as provided by this Act, and shall continue so liable in respect of all fares received up to the date at which the Board of Trade certify that the company has complied with the said order. Where two or more companies are concerned, the certificate shall state whether both or all, or one or more, and which of them is in default.

(4.) A company on whom an order is made by the Board of Trade under this section may within six months after the making of the order appeal to the Railway Commissioners, who shall have the same power in the matter as if it had been originally referred to their decision.

(5.) The Board of Trade or the Railway Commissioners, as the case may be, may rescind or vary any order made by them under this section.

Provision as
to special

4.—(1.) Where any Act of Parliament allows a number of miles

greater than the actual number of miles to be reckoned for the purpose of calculating the fares on any part of a railway, the mileage so allowed shall be deemed for the purposes of this Act to be the mileage of that part of the railway.

46 & 47 Vict.
c. 34,
ss. 5-6.

mileage and
exceptional
charges.

(2.) Where any Act of Parliament allows special or exceptional charges upon any part of a railway, that part shall for the purpose of calculating fares under this Act be deemed to be a separate railway.

5. For the purposes of this Act fares shall not be deemed to exceed the rate of one penny a mile which do not exceed one penny for a single journey of any distance less than a mile, or, where the distance travelled, being more than one mile, is any number of complete half miles and a fraction not less than a quarter of a mile, do not exceed one halfpenny for every half mile and one halfpenny for the fraction; but for a child between three and twelve years of age the fare shall not exceed half an adult's fare, and children under three years of age shall be conveyed free of charge: Provided that a railway company shall not be bound to charge less than one penny to any person over three years of age for any single journey.

Proviso as to
fractions of
miles.
21 & 22 Vict.
c. 75.

Any charge or fare which by any local and personal Act relating to any railway is declared to be a charge or fare consistent with the provisions of the enactments relating to passenger duty which are repealed by this Act shall be deemed for the purposes of this Act to be a fare not exceeding the rate of one penny a mile.

6. (1.) For the purpose of moving by railway on any occasion of the public service—

Conveyance
of the Queen's
forces at re-
duced rates.

(a) any of the officers or men in or belonging to her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and

(b) any of the officers or soldiers in her Majesty's regular, reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law; and

44 & 45 Vict.
c. 58.

(c) any officers or men of any police force;

(all and any of which officers, soldiers and men are in this Act called "the forces");

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessities and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authority, and subject to or in default of agreement on the following terms:

(i.) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified

46 & 47 Vict.
c. 34, s. 6.

- in the route, all carriages being protected from the weather and having proper accommodation :
- (ii.) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three-fourths ; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three-fourths, as for four officers and one hundred and forty-six soldiers or other persons ; and for the numbers in excess of the said one hundred and fifty, one-half :
 - (iii.) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult :
 - (iv.) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed ; and any excess of weight shall be conveyed at not more than two-thirds of the rate charged to the public for excess luggage :
 - (v.) The said public baggage, stores, arms, ammunition, necessaries, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same :
 - (vi.) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty or one of Her Majesty's Principal Secretaries of State, as the case may be.
- (2.) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorized in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorized in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorized in this behalf by the police authority.
- (3.) Fares payable under this section shall be exempt from passenger duty.
- (4.) Where a company has by refusal or neglect to comply with an order of the Board of Trade or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and

things as mentioned in this section on the same terms as if this Act had not been passed. 46 & 47 Vict.
c. 34,
ss. 7—10.

7. The Act of the fifth and sixth years of Her Majesty's reign, chapter seventy-nine, intituled "An Act to repeal the duties payable on stage carriages and on passengers conveyed upon railways and certain other stamp duties in Great Britain, and to grant other duties in lieu thereof, and also to amend the laws relating to the stamp duties," is hereby amended in the following respects:—

Amendment
of 5 & 6 Vict.
c. 79, ss. 4
and 7.

(a.) In lieu of the affidavit required by section four of the said Act in verification of accounts rendered for the purposes of railway passenger duty, every such account shall be certified to be a full and true account under the hand of the person by whom the affidavit would have been made if this Act had not been passed.

(b.) The Commissioners of Inland Revenue may, at their discretion, dispense with the security by bond required by section seven of the said Act.

8. In this Act, unless a contrary intention appears from the Definitions context—

The term "fare" includes all sums received or charged for the hire, fare, or conveyance of passengers upon or along any railway:

The term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament:

The term "the Admiralty" means the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral:

The term "police force" means the police force of the metropolitan police district, or any county, borough, or place maintaining a separate police force:

The term "police authority" means the Secretary of State, quarter sessions, watch committee, police committee, police commissioners, or other authority having the management of a police force.

Anything which the Board of Trade is by this Act empowered or required to do may be done by writing under the hand of the President or Secretary or one of the Assistant Secretaries of the Board.

9. This Act shall come into operation on the first day of October one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act. Commence-
ment of Act.

10. Without prejudice to anything done or suffered, or any right acquired or liability incurred before the commencement of this Act, the Acts specified in the Schedule to this Act are hereby Repeal.

46 & 47 Vict.
c. 34, s. 11—
Sched.

repealed, as from the commencement of this Act, to the extent specified in the third column of the Schedule, except so far as such Acts apply to Ireland, and except as respecting the conveyance of forces by companies who lose the benefit of this Act.

Extent of
Act.

11. This Act shall not extend to Ireland.

SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
5 & 6 Vict. c. 55....	An Act for the better regulation of railways and for the conveyance of troops.	Section twenty.
7 & 8 Vict. c. 85	An Act to attach certain conditions to the construction of future railways authorised or to be authorised by any Act of the present or succeeding sessions of Parliament; and for other purposes in relation to railways.	Sections six, seven, eight, nine, ten, and twelve.
16 & 17 Vict. c. 69..	An Act to make better provision concerning the entry and service of seamen, and otherwise to amend the laws concerning Her Majesty's Navy.	Section eighteen.
21 & 22 Vict. c. 75..	An Act to amend the law relating to cheap trains, and to restrain the exercise of certain powers by canal companies being also railway companies.	Sections one and two.
26 & 27 Vict. c. 33..	An Act for granting to Her Majesty certain duties of inland revenue; and to amend the laws relating to the inland revenue.	Section fourteen.

CHEAP TRAINS ACT, 1883.46 & 47 Vict.**BOARD OF TRADE,***12th October, 1883.***SIR,**

I am directed by the Board of Trade to request that you will call the attention of the directors of your company to those provisions of the Cheap Trains Act, 1883, which vary the duties payable in respect of passengers conveyed for hire on railways.

Under sections 2, 4 and 5 of that Act, all fares of a penny a mile are exempt from passenger duty, and the limitations which under the previous Acts were attached to the exemption of cheap trains are consequently repealed.

Under section 2, fares exceeding 1*d.* a mile are rendered liable to a duty of 2 per cent. in lieu of the existing duty of 5 per cent. within areas containing not less than 100,000 inhabitants, and certified by the Board of Trade as urban districts. No such districts have as yet been certified by the Board of Trade, but they are taking steps to consider any applications which the companies may make to them on this subject. In so doing the question of accommodation given to the poorer classes who inhabit those districts will have to be considered at the same time.

To these reductions of taxation is attached the condition (s. 3) that if a due proportion of the accommodation afforded by each company is not afforded to passengers at fares not exceeding 1*d.* a mile, or if proper workmen's trains are not provided between six in the evening and eight in the morning at such fares and hours as the Board of Trade think reasonable, inquiry may be made, and if the company prove to be in default the above-mentioned reductions of taxation shall be withdrawn from that company.

The above reductions of taxation were made by Parliament in the belief and trust, justified in most cases by the growth of third class traffic, and by the increase of workmen's trains, that the true policy of the companies in the matter of accommodation to the poorer classes of society is consistent with the interests of those classes, and that the future would see a continual increase in the accommodation given to those classes.

It is, however, the duty of the Board under the provisions contained in the third section of the Act to see that these expectations are fulfilled, and should they prove not to be fulfilled, the Board will feel themselves bound to exercise the powers conferred on them by that section.

46 & 47 Viet.

Under these circumstances the Board of Trade request to be informed—

I. What accommodation is now provided by your company for passengers at fares not exceeding one penny a mile, and what accommodation is given by it in the shape of workmen's trains?

II. What workmen's trains are provided upon the railway, the stations between which they run, the length of the journeys, the hours of starting and returning, and the charges made; also the statutory obligations of the company (if any) with regard to workmen's trains. It should also be stated whether the accommodation provided in the carriages is such as to comply in each particular with the requirements hitherto made for parliamentary trains?

III. Whether your company propose to make any and what additions to or alterations in the accommodation thus given to passengers at or under 1d. a mile, or to workmen?

I am, Sir,

Your obedient Servant,

The Secretary of the

T. H. FARRER.

——— Railway Company.

THE ANIMALS ORDER OF 1886.

Interpretation.

5. In this Order—

The Act of 1878 means the Contagious Diseases (Animals) Act, 1878.

CHAPTER 18.—RAILWAY TRAFFIC.

Horse-Boxes.

103.—(1.) A horse-box used for horses, asses, or mules on a railway shall, on every occasion after a horse, ass, or mule is taken out of it, and before any other horse, ass, or mule, or any animal is placed therein, be cleansed as follows:

- (i.) The floor of the horse-box, and all other parts thereof with which the droppings of horses, asses, or mules have come in contact shall be scraped and swept, and the scrapings and sweepings and all dung, sawdust, fodder, litter, and other matter shall be effectually removed therefrom: and

- (ii.) The sides of the horse-box and all other parts thereof with which the head or any discharge from the mouth or nostrils of a horse, ass, or mule has come in contact shall be thoroughly washed with water by means of a sponge, brush, or other instrument.
- (2.) The scrapings and sweepings of the horse-box, and all dung, sawdust, fodder, litter, and other matter removed therefrom, shall forthwith be well mixed with quicklime.

Horse-Boxes, Guard's Vans, and other Vehicles.

104.—(1.) A horse-box or a guard's van or other railway vehicle (not being a railway truck) if used for animals on a railway shall, on every occasion after an animal is taken out of it, and before any other animal, or any horse, ass, or mule is placed in it, be cleansed and disinfected as follows:

- (i.) If the animal is accompanied by a declaration in writing of the owner or consignee or his agent to the effect that it is intended for exhibition or other special purpose therein stated, and has not, to the best of his knowledge and belief, been exposed to the infection of disease, the vehicle shall be cleansed as follows:

- (a.) The floor of the vehicle, and all other parts thereof with which the droppings of the animal have come in contact, shall be scraped and swept, and the scrapings and sweepings, and all dung, sawdust, fodder, litter, and other matter shall be effectually removed therefrom: and

- (b.) The sides of the vehicle, and all other parts thereof with which the head or any discharge from the mouth or nostrils of the animal has come in contact shall be thoroughly washed with water by means of a sponge, brush, or other instrument: but

- (ii.) If the animal is not accompanied by such a declaration, the vehicle shall be cleansed and disinfected as follows:

- (c.) The floor of the vehicle, and all other parts thereof with which the droppings of the animal have come in contact, shall be scraped and swept, and the scrapings and sweepings, and all dung, sawdust, fodder, litter, and other matter shall be effectually removed from the vehicle: then

- (d.) The same parts of the vehicle shall be thoroughly washed or scrubbed or scoured with water: then

- (e.) The same parts of the vehicle shall have applied to them a coating of lime-wash.

- (2.) The scrapings and sweeping of the vehicle, and all dung, sawdust, fodder, litter, and other matter removed therefrom shall forthwith be well mixed with quicklime, and be effectually removed from contact with animals.

Trucks.

105.—(1.) A railway truck, if used for animals on a railway, shall, on every occasion after an animal is taken out of it, and

before any other animal, or any horse, ass, or mule, or any fodder or litter, or anything intended to be used for or about animals, is placed in it, be cleansed and disinfected as follows:

- (i.) The floor of the truck, and all other parts thereof with which animals or their droppings have come in contact shall be scraped and swept, and the scrapings and sweepings, and all dung, sawdust, litter, and other matter shall be effectually removed therefrom: then
 - (ii.) The same parts of the truck shall be thoroughly washed or scrubbed or scoured with water: then
 - (iii.) The same parts of the truck shall have applied to them a coating of lime-wash.
- (2.) The scrapings and sweepings of the truck, and all dung, sawdust, litter and other matter removed therefrom shall forthwith be well mixed with quicklime, and be effectually removed from contact with animals.

Vans.

106.—(1.) A van, if used for containing animals, horses, asses, or mules while carried on a railway, shall, on every occasion after a diseased or suspected animal, horse, ass, or mule is taken out of it, and as soon as practicable, and before any other animal, horse, ass, or mule is placed in it, be cleansed and disinfected as follows:

- (i.) The floor of the van, and all other parts thereof with which animals, horses, asses, or mules, or their droppings have come in contact shall be scraped and swept, and the scrapings and sweepings, and all dung, sawdust, litter, and other matter shall be effectually removed therefrom: then
 - (ii.) The same parts of the van shall be thoroughly washed or scrubbed or scoured with water: then
 - (iii.) The same parts of the van shall have applied to them a coating of lime-wash.
- (2.) The scrapings and sweepings of the van, and all dung, sawdust, litter, and other matter removed therefrom shall forthwith be well mixed with quicklime, and be effectually removed from contact with animals.

Moveable Gangways and other Apparatus.

107.—(1.) A moveable gangway or passage-way, cage, or other apparatus, used or intended for the loading or unloading of animals on or from a railway truck, or other railway vehicle, or otherwise used in connection with the transit of animals on a railway, shall, as soon as practicable after being so used, be cleansed as follows:

- (i.) The gangway or apparatus shall be scraped and swept, and all dung, litter, and other matter shall be effectually removed therefrom: then
 - (ii.) The gangway or apparatus shall be thoroughly washed or scrubbed or scoured with water.
- (2.) The scrapings and sweepings of the gangway or apparatus,

and all dung, litter, and other matter removed therefrom shall forthwith be well mixed with quicklime, and be effectually removed from contact with animals.

Pens.

108.—(1.) Every pen or other place being in, about, near, or on a station, building, or land of a railway company, and used or intended to be used by or by permission of a railway company, or otherwise, for the reception or keeping of animals before, after, or in course of their transit by railway, shall be cleansed and disinfected, either on each day on which it is used and after it has been used, or at some time not later than twelve o'clock at noon of the next following day and before it is used on such next following day: provided that where such user is on a Saturday the Monday following shall be considered to be the next following day for such purpose.

(2.) Every such pen or other place shall be cleansed and disinfected as follows:

(i.) All parts of the pen or other place with which animals or their droppings have come in contact shall be scraped and swept, and the scrapings and sweepings, and all dung, sawdust, litter, and other matter shall be effectually removed therefrom: then

(ii.) The same parts of the pen or other place shall be thoroughly washed or scrubbed or scoured with water: then

(iii.) The same parts of the pen or other place shall have applied to them a coating of lime-wash.

(3.) The scrapings and sweepings of the pen or other place, and all dung, sawdust, litter, and other matter removed therefrom shall forthwith be well mixed with quicklime, and be effectually removed from contact with animals.

CHAPTER 22.—OFFENCES.

114. If anything is done or omitted to be done in contravention of any of the foregoing provisions of this Part, the owner and the charterer and the master of the vessel in or in respect of which—and the owner of the gangway or passage-way, cage, or other apparatus in respect of which—and the railway company carrying animals, horses, asses, or mules on or owning or working the railway on which—and the owner and the lessee and the occupier of the pen or other place in which—and the person using the van in which—and the owner and the lessee and the occupier of the place of landing or place adjacent thereto or other place in which—and the owner and the lessee and the occupier of any other place or thing in respect of which—(as the case may be) the same is done or omitted, shall, each according to and in respect of his or their own acts or omissions, be deemed guilty of an offence against the Act of 1878.

CHAPTER 26.—TRANSIT BY RAILWAY.

Trucks, Horse-Boxes, or other Vehicles.

123. Every railway truck, horse-box, or other railway vehicle, used for carrying animals, horses, asses, or mules on a railway, shall be provided at each end with two spring buffers, and the floor thereof shall, in order to prevent slipping, be strewn with a proper quantity of litter or sand or other proper substance, or be fitted with battens or other proper foot-holds.

Overcrowding.

124. A railway company shall not allow any railway truck, horse-box, or other vehicle used for carrying animals, horses, asses, or mules on the railway to be overcrowded so as to cause unnecessary suffering to the animals, horses, asses, or mules therein.

Shorn Sheep.

125. Between each first day of November and the next following thirtieth day of April (both days inclusive) every railway truck or other railway vehicle carrying sheep shorn and unclothed shall be covered and inclosed so as to protect the sheep from the weather, without obstruction to ventilation; except that this article shall not apply to sheep last shorn more than sixty days before being so carried.

CHAPTER 27.—OFFENCES.

126. If anything is done or omitted to be done in contravention of any of the foregoing provisions of this part, the owner and the charterer and the master of the vessel in which—and the owner and the lessee and the occupier of the place where animals are put on board of or landed from vessels at which—and the railway company carrying animals on or owning or working the railway on which—and also, in case of the overcrowding of a vessel, or of a railway truck, horse-box, or other vehicle on a railway, or of the carrying on a railway of sheep shorn and unclothed, the consignor of the animals in respect of which—(as the case may be) the same is done or omitted, shall, each according to and in respect of his or their own acts or omissions, be deemed guilty of an offence against the Act of 1878.

CHAPTER 28.—WATER SUPPLY ON RAILWAYS.

127. The railway companies working the railways named in the Third Schedule shall make a provision of water, to the satisfaction of the Privy Council, at each of the stations therein named, for animals carried or about to be or having been carried on those railways.

The third Schedule contains a long list of stations which it has not been thought necessary to reproduce here.

APPENDIX.

STANDING ORDERS OF THE HOUSE OF COMMONS FOR THE SESSION 1887.

[*The Standing Orders of the House of Lords are almost identical with those of the House of Commons.*]

PART I.

APPOINTMENT OF EXAMINERS.

2. There shall be one or more officers of this house, to be called **Examiners of** *petitions.*
"THE EXAMINERS OF PETITIONS FOR PRIVATE BILLS," who shall
 be appointed by Mr. Speaker.

PART II.

STANDING ORDERS, COMPLIANCE WITH WHICH IS TO BE PROVED BEFORE THE EXAMINERS.

2 a.

COMPLIANCE with the following Standing Orders shall be proved
 before one of the examiners; viz. :—

1. *Notices by Advertisement.*

3. In all cases where application is intended to be made for leave to bring in a bill relating to any of the subjects included in either of the two classes of private bills, notices shall be given stating the objects of such intended application, and the time at which copies of the bill will be deposited in the Private Bill Office; and if it be intended to apply for powers for the compulsory purchase of lands or houses, or for extending the time granted by any former Act for that purpose, or to amalgamate with any other company, or to sell or lease the undertaking, or to purchase or take on lease the undertaking of any other company, or to enter into working agreements or traffic arrangements, or to amend or repeal any former Act or Acts, or to levy any tolls, rates or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or to confer, vary, or extinguish any other rights or privileges, the notices shall specify such intention, and shall also specify the company, person, or persons with, to, from, or by whom it is intended to be proposed that such amalgamation, sale, purchase, lease, working agreements, or traffic arrangements shall be made; and the

Notices to state objects of application, when bills will be deposited in Private Bill Office, and intention to seek for powers to purchase lands, or to amalgamate, &c. or to levy or alter tolls, to be stated, and also the companies, &c. with whom any amalgamation, &c. is proposed.

Appendix.

whole of the notice relating to the same bill shall be included in the same advertisement, which shall be headed by a short title, descriptive of the undertaking or bill.

a second
class bills,
notices to
obtain names
of parishes,
&c.

4. In cases of bills included in the second class (a), and of bills of the first class, in respect to which plans are required to be deposited, such notices shall also contain a description of all the termini, together with the names of the parishes, townships, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged, or in which any land or houses intended to be taken are situate, and where any common or commonable land is intended to be taken, such notice shall contain the name of such common or commonable land (if any), and the name of any parish or township in which such land is situate, together with an estimate of the quantity of such common or commonable land proposed to be taken, and shall state the time and place of deposit of the plans, sections, books of reference, and copies of the Gazette notice respectively, with the clerks of the peace, sheriff clerks, parish clerks, clerks of vestries or district boards, session clerks, town clerks, and clerks of unions, as the case may be.

publication of
notices in
Gazettes and
newspapers.

9. In the months of October and November, or either of them immediately preceding the application for a bill, the notices shall be published once in the *London, Edinburgh or Dublin Gazette*, as the case may be, and in three successive weeks in some one and the same newspaper of the county in which the city, county of a city, town, county of a town, or lands to which such bill relates shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; and if such bill relate specially to any particular city, county of a city, town, or county of a town, in which any newspaper is published, the notices shall be published in three successive weeks in one and the same newspaper published therein; or if such bill do not relate to any particular city, county of a city, town, county of a town, or lands, such notices shall be published once in the *London, Edinburgh or Dublin Gazette* only, as the case may be; and if such bill relate to lands situate in more than one county, such notices shall be inserted once in each of three successive weeks, in some newspaper or newspapers which shall be published in *London* at least six days in the week, or in *Edinburgh or Dublin* at least two days in the week, as the case may be, and in a newspaper of the county in which the principal office of the company or companies or other parties who are the promoters of any such bill is situate, and in a newspaper of every county in which any new works are proposed to be constructed, or in which any lands are intended to be taken, or in which any lands are situate in respect of which any new or further powers for the completion of works already authorised are intended to be applied for.

(a) Railway Bills are in the second class of bills.

2. Notices and Applications to Owners, Lessees and Occupiers of Lands and Houses.

11. On or before the fifteenth day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of the time granted by any former Act for that purpose is sought, application in writing shall be made to the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses so intended to be taken, or which may be taken as being within the limits of deviation defined upon the plan; and in cases of bills included in the second class, such application shall be, as nearly as may be, in the form set forth in the Appendix marked (A).

Application to owners, &c., on or before 15th December.

12. Separate lists shall be made of the names of such owners, lessees and occupiers, distinguishing those who have assented, dissented or are neuter in respect to such application, or who have returned no answer thereto; and where no written acknowledgment has been returned to an application forwarded by post, or where such application has been returned as undelivered at any time before the making up of such lists, the direction of the letter in which the same was so forwarded shall be inserted therein.

Lists of owners, &c. assenting, dissenting, and neuter.

14. On or before the fifteenth day of December immediately preceding the application for a bill, whereby it is proposed to abstract water from any stream for the purpose of supplying any cut, canal, reservoir, aqueduct, navigation, or waterwork, notice in writing of such bill shall be given to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall, within a less distance than twenty miles, fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories, or other works as aforesaid, which shall be situate between the point at which such water is proposed to be abstracted, and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of plans, sections, and books of reference and copies of the Gazette notice respectively with the clerks of the peace and sheriff clerks, as the case may be.

Notices when it is proposed to abstract water from any stream.

16. On or before the fifteenth day of December immediately preceding the application for a bill whereby the whole or any part of a work authorised by any former Act is intended to be relinquished, notice in writing of such bill shall be served upon the owners or reputed owners, lessees or reputed lessees, and occupiers of the lands in which any part of the said work intended to be thereby relinquished is situate.

Relinquishment of Works.

Notice to owners, &c. when the bill is to abridge any public works.

Notice to owners, &c. in cases of alteration or repeal of provisions.

17. On or before the twenty-first day of December immediately preceding the application for a bill, whereby any express statutory provision then in force for the protection of the owner, lessee, or occupier of any property, or for the protection or benefit of any public trustees or commissioners, corporation or person, specifically named in such provision, is sought to be altered or repealed, notice in writing of such bill, and of the intention to alter or repeal such provision, shall be served upon every such owner, lessee, or occupier, public trustees or commissioners, corporation or person.

Notice to owners and lessees in case of crown, church or corporation property.

18. On or before the twenty-first day of December immediately preceding the application for a bill relating to crown, church, or corporation property, or property held in trust for public or charitable purposes, notice in writing of such application to Parliament shall be served upon the owners or reputed owners of such property, and the lessees or reputed lessees of such property holding leases granted for a life or lives, or for any term of twenty-one years or upwards.

How application to be made and notices served.

19. All applications shall be made, and notices served, either by delivering the same personally to the party entitled to such application or notice, or by leaving the same at his usual place of abode, or, in his absence from the United Kingdom, with his agent, or by forwarding the same by post in a registered letter, addressed with a sufficient direction to his usual place of abode, and posted on or before the third day previously to the day required for delivery of the same personally, at such places, at such hours, and according to such regulations as the Postmaster-General shall from time to time appoint, for the posting and registration of such letters, and shall be accompanied by a copy of the standing orders which regulate the time and mode of presenting petitions in opposition to bills.

Written acknowledgment of party applied to, and, in case of application or notice by post, post-office receipt sufficient evidence of application.

20. In all cases the written acknowledgment of the party applied to shall, in the absence of other proof, be sufficient evidence of such application having been made, or notice given; and in case of an application or notice having been forwarded by post, in a registered letter, the production of the post-office receipt of such letter, duly stamped, in such form as the Postmaster-General shall have appointed, shall be sufficient evidence of the due delivery of such letter: provided it shall appear that the same was properly and sufficiently directed, and that the same was not returned by the post-office as undelivered.

Notices not to be given on Sunday, &c.

21. No notice served or application made on a Sunday or Christmas Day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day, shall be deemed valid, except in the case of delivery of letters by post.

3. Documents required to be deposited, and the Times and Places of Deposit.

23. No deposit required by the following orders shall be deemed valid if made on a Sunday or Christmas Day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day.

Deposit not to be made on Sunday, &c.

Deposits on or before the 30th November.

24. In cases of bills of the second class, a plan and also a duplicate thereof, together with a book of reference thereto, and a section and also a duplicate thereof, as hereinafter described, and in cases of bills of the first class, by which any lands or houses are intended to be taken, a plan and duplicate thereof, together with a book of reference thereto, shall be deposited for public inspection at the office of the Clerk of the Peace for every county, riding or division in England or Ireland, or in the office of the principal Sheriff Clerk of every county in Scotland, and where any county in Scotland is divided into districts or divisions, then also in the office of the principal Sheriff Clerk in or for each district or division, in or through which the work is proposed to be made, maintained, varied, extended or enlarged, or in which such lands or houses are situate, on or before the 30th day of November immediately preceding the application for the bill; and in the case of railway bills, the ordnance map, on the scale of one inch to a mile, or where there is no ordnance map, a published map, to a scale of not less than half an inch to a mile (or in Ireland, to a scale of not less than a quarter of an inch to a mile), with the line of railway delineated thereon, so as to show its general course and direction, shall be deposited with such plans, sections and book of reference; and the Clerks of the Peace or Sheriff Clerks, or their respective deputies, shall make a memorial in writing upon the plans, sections and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and shall at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections so deposited shall be sealed up and retained in the possession of the Clerk of the Peace or Sheriff Clerk until called for by order of one of the two Houses of Parliament. In cases of bills whereby it is proposed to alter or extend the municipal boundary of any city, borough, or urban sanitary district, a map on a scale of not less than three inches to a mile, and also a duplicate thereof, showing as well the present boundaries of the city, borough, or urban sanitary district as the boundaries of the proposed extension, shall be deposited with the town clerk of such city or borough, or clerk of such urban sanitary district, who shall at all seasonable hours of the day permit any person to view and examine such map, and to make copies thereof.

Plans and books of reference, and sections to be deposited with Clerk of the Peace, &c.

In cases of railways, ordnance or published map to be deposited with Clerk of Peace, &c.

Clerks of Peace to indorse a memorial on plans, &c.

In case of proposed alteration or extension of municipal boundaries, map and duplicate to be deposited with Town Clerk, &c.

Deposit of plans, &c. in private bill office.

25. On or before the 30th day of November, a copy of the **said** plans, sections and books of reference, and in the case of **railway** bills, also a copy of the said ordnance or published map, with the line of railway delineated thereon, shall be deposited in the **private** bill office of this house.

When works on tidal lands, plans, sections, and map to be deposited at the office of the Harbour Department, Board of Trade.

26. In cases where the work is to be situate on tidal lands within the ordinary spring tides, a copy of the plans and sections shall, on or before the 30th day of November immediately preceding the application for the bill, be deposited at the office of the Harbour Department, Board of Trade, marked "Tidal Waters," and on such copy all tidal waters shall be coloured blue, and if the plans include any bridge across tidal waters, the dimensions, as regards span and headway of the nearest bridges, if any, across the same tidal waters above and below the proposed new bridge, shall be marked thereon; and in all such cases, such plans and sections shall be accompanied by an ordnance or published map of the country over which the works are proposed to extend, or are to be carried, with their position and extent, or route accurately laid down thereon.

When works on banks, &c. of any river, plans, sections, and map to be deposited at the office of the conservators of the river.

26a. And in cases where the work is to be situate on the banks, foreshore or bed of any river, having a board of conservators constituted by Act of Parliament, a copy of the plans and sections shall, on or before the 30th day of November immediately preceding the application for the bill, be deposited at the office of the conservators of the river; and if the plans include any tunnel under, or bridge over, the river, the dimensions as regards depth below the river and span and headway shall be marked thereon, and such plans shall be accompanied by an ordnance or published map of the country over which the works are proposed to extend, or are to be carried, with their position and extent, or route accurately laid down thereon.

Deposit of plans, &c. at the office of the Board of Trade.

27. In the case of railway and tramway bills, a copy of all plans, sections, and books of reference, required to be deposited in the office of any Clerk of the Peace or Sheriff Clerk, on or before the 30th day of November immediately preceding the application for the bill (and in the case of railway bills also a copy of the said ordnance or published map, with the line of railway delineated thereon), shall on or before the same day be deposited in the office of the Board of Trade.

Deposit of plans and sections with Metropolitan Board of Works.

28. In cases where any portion of the work shall be situate within the limits of the metropolis, as defined by the "Metropolis Management Act, 1855," a copy of so much of the plans and sections as relates to such portion of the work shall, on or before the 30th day of November, be deposited at the office of the Metropolitan Board of Works.

29. On or before the 30th day of November, a copy of so much of the said plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended or enlarged, or in which any lands or houses, intended to be taken, are situate, together with a copy of so much of the book of reference as relates to such parish, shall be deposited with the parish clerk of each such parish in England, or, in the case of any extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, or in case of any place within the limits of the metropolis, as defined by the "Metropolis Management Act, 1855," with the clerk of the vestry of each parish in Schedule A., and with the clerk of the district board of parishes in Schedule B. of the said Act; with the session clerk of each parish in Scotland, and in royal burghs with the town clerk, and with the clerk of the union within which such parish is included in Ireland.

Deposit of parish plan, section and book of reference, with parish clerk, &c.

29a. On or before the 30th day of November, a copy of so much of the said plans and sections as relates to the district of any urban sanitary authority in England or Ireland in or through which the work is intended to be made, maintained, varied, extended or enlarged, or in which any lands or houses, intended to be taken, are situate, together with a copy of so much of the book of reference as relates to that district, shall be deposited with the clerk of that sanitary authority.

Deposit of plans and sections with clerk of sanitary authority.

30. Where by any bill power is sought to take any churchyard, burial ground, or cemetery, or any part thereof, or to disturb the bodies interred therein, or where power is sought to take any common or commonable land, as the case may be, a copy of so much of the plans, sections, and books of reference required by these orders to be deposited in the Private Bill Office in respect of such bill as relates to such churchyard, burial ground, or cemetery, common or commonable land, shall, on or before the 30th day of November, be deposited at the office of the Secretary of State for the Home Department.

Deposit of plans, &c. at the Home Office in case of disturbance of a burial ground.

31. Wherever any plans, sections and books of reference, or parts thereof, are required to be deposited, a copy of the notice published in the *Gazette* of the intended application to Parliament shall be deposited therewith.

Gazette notice to be deposited with plans, &c.

Deposits on or before the 21st December.

32. Every petition for a private bill, headed by a short title descriptive of the undertaking or bill, corresponding with that at the head of the advertisement, with a declaration, signed by the agent, and a printed copy of the bill annexed, shall be deposited in the Private Bill Office on or before the 21st day of December; and such petition, bill and declaration shall be open to the inspection of all parties; and printed copies of the bill shall also be delivered therewith for the use of any member of the House or

Petition for bill, &c. to be deposited in Private Bill Office.

agent who may apply for the same. Such declaration shall state to which of the two classes of bills such bill in the judgment of the agent belongs; and if the proposed bill shall give power to effect any of the following objects; that is to say:—

Declaration of agent as to class of bill, and powers thereof, to be annexed to petition.

Power to take any lands or houses compulsorily, or to extend the time granted by any former Act for that purpose:

Power to levy tolls, rates or duties, or to alter any existing tolls, rates or duties; or to confer, vary or extinguish any exemption from payment of tolls, rates or duties, or to confer, vary or extinguish any other right or privilege:

Power to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company:

Power to interfere with any crown, church or corporation property, or property held in trust for public or charitable purposes:

Power to relinquish any part of a work authorised by a former Act:

Power to divert into any existing or intended cut, canal, reservoir, aqueduct or navigation, or into any intended variation, extension or enlargement thereof respectively, any water from any existing cut, canal, reservoir, aqueduct or navigation, whether directly or derivatively, and whether under any agreement with the proprietors thereof, or otherwise:

Power to make, vary, extend or enlarge any cut, canal, reservoir, aqueduct or navigation:

Power to make, vary, extend or enlarge any railway.

The said declaration shall state which of such powers are given by the bill, and shall indicate in which clause of the bill (referring to them by their number) such powers are given, and shall further state that the bill does not give power to effect any of the objects enumerated in this order, other than those stated in the declaration.

If the proposed bill shall not give power to effect any of the objects enumerated in the preceding order, the said declaration shall state that the bill does not give power to effect any of such objects.

The said declaration shall also state that the bill does not give any powers other than those included in the notices for the bill.

Deposit of private bills at Treasury and other public departments.

33. On or before the 21st day of December, a printed copy of every private bill shall be deposited at the office of her Majesty's Treasury and at the General Post Office; a printed copy of every railway and canal bill, and of every bill for incorporating or giving powers to any company, shall be deposited at the office of the Board of Trade; a printed copy of every bill relating to any dock, harbour, navigation, pier or port, shall be deposited at the office of the Harbour Department of the Board of Trade, marked "Tidal Waters;" a printed copy of every bill relating to a local court, stipendiary magistrate, and of every bill whereby power is sought to take any churchyard, burial ground, or cemetery, or any part thereof, or to disturb the bodies interred therein, at the office of

the Secretary of State for the Home Department: a printed copy of every bill whereby application is made by or on behalf of any municipal corporation, local board, improvement commissioners, or other local authority in England or Wales, for power in respect of any purpose to which the several Acts specified in Part I. of the Schedule to "The Local Government Board Act, 1871," relate, and of every bill relating to turnpike roads or trusts, highways or bridges, at the office of the Local Government Board, and a printed copy of every private bill whereby the boundaries of any school district or the jurisdiction of any school board are affected at the office of the Education Department.

34. On or before the 21st day of December, a printed copy of every bill of the second class, whereby any work shall be authorised within the limits of the metropolis, as defined by "The Metropolis Management Act, 1855," shall be deposited at the office of the Metropolitan Board of Works.

Deposits of bills with the Metropolitan Board of Works.

34a. On or before the 21st day of December, a printed copy of every bill of the second class, whereby it is intended to authorise the construction of any work on the banks, foreshore or bed of any river having a board of conservators constituted by Act of Parliament, shall be deposited at the office of the conservators of the river.

Deposit of bills with conservators of rivers.

Deposits on or before the 31st December.

35. All estimates and declarations, and lists of owners, lessees and occupiers, which are required by the standing orders of the House shall be deposited in the Private Bill Office on or before the 31st day of December.

Deposit of estimates, &c. in Private Bill Office.

35a. As respects all bills for the incorporation of joint stock companies, or proposed companies for carrying on any trade or business, or for conferring upon such companies the power of suing and being sued, there shall be deposited in the Private Bill Office, on or before 31st December, a copy of the deed or agreement of partnership (if any) under which the company or proposed company is acting, and in all cases a declaration stating the following matters:—

Documents to be deposited in Private Bill Office in regard to Joint Stock Companies Bills.

1st.—The present and proposed amount of the capital of the company.

2nd.—The number of shares, and the amount of each share.

3rd.—The number of shares subscribed for.

4th.—The amount of subscriptions paid up.

5th.—The names, residences and descriptions of the shareholders or subscribers (so far as the same can be made out), and of the actual or provisional directors, treasurers, secretaries, or other officer, if any.

And such documents shall be verified by the signature of some authorised officer of the company or proposed company (if any), and by some responsible party promoting the bill; and copies of

such declarations shall be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House, and at the Private Bill Office for the use of any agent who may apply for the same.

Copies of estimate and declaration to be printed, and delivered in at Private Bill Office.

36. On or before the 31st December, copies of the estimate of expense of the undertaking; and where a declaration alone, or declaration and estimate of the probable amount of rates and duties, are required, copies of such declaration, or of such declaration and estimate, shall be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House, and at the Private Bill Office for the use of any agent who may apply for the same.

Form of estimate.

37. The estimate for any works proposed to be authorised by any railway, dock, or harbour bill, shall be in the following form, or as near thereto as circumstances may permit:—

ESTIMATE of the proposed		(Railway).	
Line, No.	Miles. f. ch.	Whether Single or Double.	
Length of Line.....			
	Cubic yds.	Price per Yard.	£. s. d. £. s. d.
Earthworks:			
Cuttings—Rock			
Soft Soil			
Roads			
TOTAL			
Embankments, including Roads Cubic yds.			
Bridges—Public Roads Number			
Accommodation Bridges and Works			
Viaducts			
Culverts and Drains			
Metallings of roads and level crossings			
Gatekeepers' houses at level crossings			
Permanent way, including fencing:			
	Miles. fgs. chs.	Cost per Mile.	
	at	£. s. d.	
Permanent way for sidings, and cost of junctions			
Stations			
Contingencies		per cent.	
Land and buildings:			
	A. B. P.		
		TOTAL	£

The same details for each branch, and general summary of total cost.

Statement relating to houses in-

38. In the case of any bill which contains power to take compulsorily or by agreement, in any parish in the metropolis, twenty

or more houses, or as regards England and Wales, exclusive of the metropolis, in any city, borough, or other urban sanitary district, or in any parish or part of a parish not being within an urban sanitary district, or in Scotland in any district within the meaning of "The Public Health (Scotland) Act, 1867," or in Ireland in any urban sanitary district as defined by "The Public Health (Ireland) Act, 1878," ten or more houses, occupied either wholly or partially by persons belonging to the labouring classes, as defined by Order 183*a*, as tenants or lodgers, the promoters shall deposit in the Private Bill Office, and at the office of the central authority, as defined in Order 183*a*, on or before the 31st day of December, a statement of the number, description and situation of such houses, the number (so far as can be ascertained) of persons residing therein, and a copy of so much of the plan (if any) as relates thereto.

habited by labouring classes to be deposited in Private Bill Office and office of central authority.

39. Whenever plans, sections, or books of reference are deposited in the case of an application to any public department, for a provisional order or provisional certificate, duplicates of the said documents shall at the same time be deposited in the Private Bill Office; provided that with regard to such deposits as are so made at any public department after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November.

Deposit of plans, &c. in case of provisional orders in Private Bill Office.

4. Form in which Plans, Books of Reference, Sections and Cross Sections are to be prepared.

Plans.

40. Every plan required to be deposited shall be drawn to a scale of not less than four inches to a mile, and in the case of bills of the first class, shall describe the lands intended to be taken, and in the case of bills of the second class, shall describe the line or situation of the whole of the work (no alternative line or work being in any case permitted), and the lands in or through which it is to be made, maintained, varied, extended or enlarged, or through which any communication to or from the work shall be made; and where it is the intention of the promoters to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every 100 feet, an enlarged plan shall be added of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden, either in the line of the proposed work, or included within the limits of the said deviation, upon a scale of not less than a quarter of an inch to every 100 feet.

Description of plans.

Lands within deviation to be on plan.

Buildings, &c. on enlarged scale.

In case of cut, canals, &c. plan to describe brooks, &c. to be diverted.

41. In all cases where it is proposed to make, vary, extend or enlarge any cut, canal, reservoir, aqueduct or navigation, the plan shall describe the brooks and streams to be directly diverted into such intended cut, canal, reservoir, aqueduct or navigation, or into any variation, extension or enlargement thereof respectively, for supplying the same with water.

In case of railways, distances to be marked in miles and furlongs, and memorandum of curves and tunnelling.

42. In all cases where it is proposed to make, vary, extend, or enlarge any railway, the plan shall exhibit thereon the distances in miles and furlongs, from one of the termini; and a memorandum of the radius of every curve not exceeding one mile in length shall be noted on the plan in furlongs and chains; and where tunnelling as a substitute for open cutting is intended, the same shall be marked by a dotted line on the plan, and no work shall be shown as tunnelling, in the making of which it will be necessary to cut through or remove the surface soil.

Diversion of roads, &c. to be shown.

43. If it be intended to divert, widen, or narrow any turnpike road, public carriage road, navigable river, canal or railway, the course of such diversion, and the extent of such widening or narrowing, shall be marked upon the plan.

In case of junctions, course of existing line to be shown on deposited plan.

44. When a railway is intended to form a junction with an existing or authorised line of railway, the course of such existing or authorised line of railway shall be shown on the deposited plan for a distance of 800 yards on either side of the proposed junction, on the same scale as the scale of the general plan.

Plans, &c. in the case of subway bills.

45a. In the case of bills for constructing a subway, the plans and sections shall indicate the height and width of the proposed subway, and the nature of the approaches by which it is proposed to afford access to such subway.

Book of Reference.

Contents of book of reference.

46. The book of reference shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses in the line of the proposed work, or within the limits of deviation as defined upon the plan, and shall describe such lands and houses respectively.

Sections.

Section.

47. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed work, the height of every embankment, and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section) near some portion of such work, and in the case of a canal, cut, navigation, turnpike, or other carriage road or railway, near either of the termini.

49. In every section of a railway, the line of the railway marked thereon shall correspond with the upper surface of the rails.

Line of railway on section to correspond with upper surface of rails.

50. Distances on the datum line shall be marked in miles and furlongs to correspond with those on the plan; a vertical measure from the datum line to the line of the railway shall be marked in feet and inches, or decimal parts of a foot, at the commencement and termination of the railway, and at each change of the gradient or inclination thereof; and the proportion or rate of inclination between every two consecutive vertical measures shall also be marked.

Vertical measures to be marked at change of gradient.

51. Wherever the line of the railway is intended to cross any turnpike road, public carriage road, navigable river, canal, or railway, the height of the railway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts, by which the railway will be carried over the same, shall be marked in figures at every crossing thereof; and where the railway will be carried across any such turnpike-road, public carriage road or railway, on the level thereof, such crossing shall be so described on the section; and it shall also be stated if such level will be unaltered.

Height of railway over, or depth under surface of roads, &c. to be marked, and bridges and level crossings.

52. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any turnpike road, public carriage road, or railway, which will be crossed by the line of railway, then the same shall be stated on the section, and each alteration shall be numbered; and cross sections, in reference to the numbers, on a horizontal scale of not less than one inch to every 330 feet, and on a vertical scale of not less than one inch to every 40 feet, shall be added, which shall show the present surface of such road, canal, or railway, and the intended surface thereof when altered; and the greatest of the present and intended rates of inclination of such road or railway shall also be marked in figures thereon; and where any turnpike road or public carriage road is crossed on the level, a cross section of such road shall also be added, and all such cross sections shall extend 200 yards on each side of the centre line of the railway.

Cross sections of roads, &c. crossed by the railway when rates of inclination altered.

53. Wherever the extreme height of any embankment, or the extreme depth of any cutting shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures upon the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct or tunnel.

Embankments and cuttings.

54. Where tunnelling, as a substitute for open cutting or a viaduct as a substitute for solid embankment, is intended, the

Tunnelling and viaducts to be marked.

same shall be marked on the section, and no work shall be shown as tunnelling, in the making of which it will be necessary to cut through or remove the surface soil.

In case of junctions, gradient of existing line to be shown on deposited section.

55. When a railway is intended to form a junction with an existing or authorised line of railway, the gradient of such existing or authorised line of railway shall be shown on the deposited section, and in connection therewith, and on the same scale as the general section, for a distance of 800 yards on either side of the point of junction.

5. *Estimates and Deposit of Money, and Declarations in certain cases.*

Estimate in bills of the second class.

56. An estimate of the expense of the undertaking under each bill of the second class shall be made and signed by the person making the same.

Five per cent. or four per cent. of estimate to be deposited.

57. In the case of a railway bill or tramway bill, authorising the construction of works by other than an existing railway company or tramway company incorporated by Act of Parliament, possessed of a railway or tramway already opened for public traffic, and which has during the year last past paid dividends on its ordinary share capital, and which does not propose to raise under the bill a capital greater than its existing authorised capital, a sum not less than five per cent. on the amount of the estimate of expense, or in the case of substituted works, on the amount by which the expense thereof will exceed the expense of the works to be abandoned, and in the case of all bills other than railway bills and tramway bills, a sum not less than four per cent. on the amount of such estimate, or of such excess as aforesaid, shall, previously to the 15th day of January, be deposited with the Chancery division of the High Court of Justice in England, if the work is intended to be done in England, or the Court of Exchequer in Scotland, if the work is intended to be done in Scotland, and with the Court of Chancery in Ireland, if the work is intended to be done in Ireland.

Cases in which declarations may be deposited in lieu of money.

58. Where the work is to be made, wholly or in part, by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, such parties being the promoters of the bill, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and showing the actual surplus of such funds or revenue, after deducting the funds required for purposes authorised by any Act or Acts of Parliament, and also the funds which may be required for any other work to be executed under any bill in the same session, and given under the common seal of the society or company, or under the hand of some

authorised officer of such directors, trustees, or commissioners, may be deposited, and in such case no deposit of money shall be required in respect of so much of the estimate of expense as shall be provided for by such surplus funds.

Bills brought from the House of Lords.

60. A copy of every railway bill brought from the House of Lords shall be deposited in the office of the Board of Trade not later than two days after the bill is read a first time.

Copy of railway bill to be deposited at Board of Trade.

61. Whenever during the progress through the House of Lords of any bill of the second class originating in that House, any alteration has been made in any work authorised by such bill, proof shall be given before the examiners that a plan and section of such alteration, on the same scale, and containing the same particulars as the original plan and section, together with a book of reference thereto, has been deposited in the private bill office, and with the clerk of the peace of every county, riding, or division in England or Ireland, and in the office of the sheriff clerk of every county in Scotland, in which such alteration is proposed to be made, and where any county in Scotland is divided into districts or divisions, then also in the office of the principal sheriff clerk in and for each district or division in which such alteration is proposed to be made; and that a copy of such plan and section, so far as relates to each parish, together with a book of reference thereto, has been deposited with the parish clerks of each such parish in England, or in the case of any extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, with the session clerk of each such parish in Scotland, and in royal burghs with the town clerk, and the clerk of the union within which such parish in Ireland is included, in which such alteration is intended to be made, two weeks previously to the introduction of the bill into this house; and that the intention to make such alteration has been published previously to the introduction of the bill into this house once in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and for three successive weeks in some one and the same newspaper of the county in which such alteration is situate, or if there be no such paper printed therein, then in the newspaper of some county adjoining thereto; and that application in writing, as nearly as may be in the form set forth in the appendix, marked (A), was made to the owners or reputed owners, lessees or reputed lessees, or in their absence from the United Kingdom, to their agents respectively, and to the occupiers of lands through which any such alteration is intended to be made; and the consent of such owners or reputed owners, lessees or reputed lessees, and occupiers, to the making of such alteration, shall be proved before the examiner.

Notices to be given and deposits made in cases where work is altered while bill is in Parliament.

Provisions relating to the Consents of Proprietors or Members of Companies already constituted, and of Persons named as Directors.

Meeting of proprietors in the case of certain bills originating in this House.

62. Every bill originating in this House, promoted by a company already constituted by Act of Parliament, shall after the first reading thereof be referred to the examiners, who shall report as to compliance or non-compliance with the following Order :—

The bill, as introduced, or proposed to be introduced, in this House, shall be submitted to the proprietors of such company at a meeting held specially for that purpose.

Such meeting shall be called by advertisement inserted once in each of two consecutive weeks in some one and the same morning newspaper published in London, Edinburgh or Dublin, as the case may be, and in some one and the same newspaper of the county or counties in which the principal office or offices of the company is or are situate; and also by a circular addressed to each proprietor at his last known or usual address, and sent by post, or delivered at such address, not less than ten days before the holding of such meeting, enclosing a blank form of proxy, with proper instructions for the use of the same; and the same form of proxy and the same instructions, and none other, shall be sent to every such proprietor, and shall be addressed to each proprietor on the back of the form of proxy; but no such form of proxy shall be stamped before it is sent out, nor shall the funds of the company be used for the stamping any proxies, nor shall intimation be sent as to any person in whose favour the proxy may be granted, and no other circular or form of proxy relating to such meeting shall be sent to any proprietor from the office of the company, or by any director or officer of the company so describing himself.

Such meeting shall be held not earlier than the seventh day after the last insertion of such advertisement, and may be held on the same day as an ordinary general meeting of the company.

At such meeting the said bill shall be submitted to the proprietors aforesaid then present, and approved of by proprietors, present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at all ordinary meetings of the company in right of such capital. The votes of proprietors of any paid-up shares or stock other than debenture stock, not qualified to vote at ordinary meetings, whose interests may be affected by the bill, if tendered at the meeting, shall be recorded separately.

There shall be deposited at the Private Bill Office a statement of the number of votes if a poll was taken, and of the number of votes recorded separately.

Meeting of proprietors in the case of

64. In the case of every bill brought from the House of Lords in which provisions have been inserted in that House empowering

the promoters thereof, being a company already constituted by Act of Parliament, to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking, or any part thereof, or to enter into any working agreements with any other company, or to amalgamate their undertaking or any part thereof with any other undertaking, or to purchase any other undertaking, or part thereof, or to abandon their undertaking, or any part thereof, or to dissolve the said company, or in which any such provisions originally contained in the bill have been materially altered in that House, or in which any such powers are conferred on any company not being the promoters of the bill, the examiner shall report as to compliance or non-compliance with the following Order:—

certain bills originating in the House of Lords.

The bill, as introduced, or proposed to be introduced into this House, shall be submitted to the proprietors of any such company, at a meeting held specially for that purpose.

[*The four requirements which follow in this Order are identical to those occurring in Order 62, ante.*]

So far as any such bill relates to a separate undertaking in any company, as distinct from the general undertaking, separate meetings shall be held of the proprietors of the company, and of the separate undertaking, and the provisions of this Order applicable to meetings of the proprietors of the company shall, *mutatis mutandis*, apply to meetings of proprietors of the separate undertaking.

66. When any bill as introduced into Parliament, or as amended or proposed to be amended, on petition for additional provision, contains a provision authorising any company incorporated by Act of Parliament to subscribe towards or to guarantee or to raise any money in aid of the undertaking of another company (which bill is not brought in by the company so authorised, or of which such company is not a joint promoter), proof shall be required before the examiner that the company so authorised has consented to such subscription, guarantee, or raising of money, at a meeting of the proprietors of the ordinary shares in such company, held specially for that purpose, in the same manner and subject to the same provisions as the meeting directed to be held under Standing Order 62, and that such consent was given by such proprietors, present in person or by proxy, holding at least three-fourths of the ordinary paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at the meeting in right of such capital; and in case such provision is contained in the bill as introduced into Parliament, that the notices for the bill state the sum proposed to be subscribed, or guaranteed or raised, and also state that such consent of the company has been given as aforesaid, or in case such provision shall be proposed to be inserted in the bill, on a petition for additional provision that notices stating the sum proposed to be subscribed, or guaranteed or raised, and stating that the consent of the company has been given as afore-

Consent of proprietors of any company to sum authorised to be raised in aid of undertaking of another company.

Petition for additional provision.

said, have been published once in the *London Gazette*, and in the county newspapers in which the notices for the bill were published, for three successive weeks during the six weeks immediately preceding the presentation of such petition for additional provision; in any case in which such consent has been given, it shall not be necessary to submit the bill in respect of such provision as aforesaid, to the approval of a meeting to be held in accordance with Standing Order 64.

Railway bills charging payments on grand jury cess or local rate in Ireland to be submitted to and approved by grand jury or local authority.

67. When in any railway bill originating in this House a provision is contained by which the payment of any moneys is directly or contingently charged upon grand jury cess, or any other local rate in Ireland, by means of a guarantee or otherwise, such bill shall, after the first reading thereof, be referred to the examiners, who shall report as to compliance or non-compliance with the following order:—

A copy of the bill, as deposited in the Private Bill Office, shall be submitted to the grand jury or other authority empowered to present such grand jury cess, or to make such local rate, and according as the payment of any moneys is by the said bill proposed to be charged upon a county at large, or upon one or more baronies in any county, or upon any part or parts of any barony or baronies, such bill shall also be submitted to the presentment sessions for such county at large, or for such barony or baronies as the case may be, and also to the poor law guardians of every union in which any lands proposed to be charged with the payment of any moneys are situate.

Notice of bill to grand jury or local authority.

Notice of the intention to submit a copy of such bill to such grand jury or other authority, and to such presentment sessions and board of guardians, shall be given ten days previously to submitting the same to the secretary or clerk of such grand jury or authority, or presentment sessions and board of guardians, and shall be advertised once in each of two consecutive weeks in some one and the same morning newspaper published in Dublin, and in some one and the same newspaper published in the county upon which, or upon any barony or baronies in which it is proposed by the bill to impose any local rate or charge, or if in such county no newspaper is published, then in some one and the same newspaper published in any adjoining county.

Limit of time for bill to be submitted, and presentment or resolution to be deposited in Private Bill Office.

A copy of such bill shall be so submitted not earlier than six months before the time fixed for the deposit of such bill, and not earlier than the seventh day after the last insertion of such advertisement; and shall be approved by a majority of the members of the grand jury or authority, presentment sessions, and board of guardians respectively, then present and voting thereon, and the presentment or resolution of each of the said bodies approving the same shall be deposited at the Private Bill Office, together with a statement under the hand of the foreman, chairman, or other person presiding when such presentment was made, or such resolution was passed, of the number of the members then present and voting.

68. When in any bill brought from the House of Lords for the purpose of establishing a company for carrying on any work or undertaking, the name of any person or persons appears as manager, director, proprietor, or otherwise concerned in carrying such bill into effect, proof shall be required before the examiner that the said person or persons have subscribed their names to the petition for the bill, or to a printed copy of the bill, as brought up to this House.

Consent of directors, &c. who are named in a bill to be proved.

PART III.

PROCEEDINGS OF, AND IN RELATION TO, THE EXAMINERS.

Reference of Bills, &c., to, and Duties of, and Practice before Examiners.

69. The examination of the petitions for private bills which shall have been duly deposited in the Private Bill Office, shall commence on the 18th day of January, in such order and according to such regulations as shall have been made by Mr. Speaker.

When examination of petitions to commence.

70. One of the examiners shall give at least seven clear days' notice in the Private Bill Office of the day appointed for the examination of each petition which shall have been duly deposited in the Private Bill Office; and in case the promoters shall not appear at the time when the petition shall come on to be heard, the examiner to whom the case shall have been allotted shall strike the petition off the general list of petitions, and shall not re-insert the same, except by order of the House.

Notice to be given by one of the examiners of day appointed for examination.

71. The examiner shall certify by indorsement on each petition whether the standing orders have or have not been complied with; and, when they have not been complied with, he shall also report to the House the facts upon which his decision is founded, and any special circumstances connected with the case.

Examiner to indorse petition, and when standing orders not complied with, to report.

72. All petitions for additional provision in private bills, with the proposed clauses annexed, and all private bills brought from the House of Lords, and all bills introduced by leave of the House in lieu of other bills which shall have been withdrawn, and all bills to confirm any provisional order or provisional certificate, after having been read a first time, shall be referred to the examiners, and the examiner shall report to the House whether the standing orders have or have not been complied with, and when they have not been complied with, the facts upon which his decision is founded, and any special circumstances connected with the case, and in the case of any bill which, in pursuance of any report from the chairman of the Committee of Ways and Means, has originated in the House of Lords, the compliance with such standing orders only as shall not have been previously inquired into shall be proved.

Petitions for additional provision and estate bills from Lords, &c. to be referred to examiner of petitions.

Notice in cases of petitions for additional provision in private bills, &c.

73. In all cases of petitions for additional provision in private bills and of private bills brought from the House of Lords, and of bills introduced by leave of this House in lieu of other bills which shall have been withdrawn, and of bills for confirming any provisional order or certificate, the examiner shall give at least two clear days' notice in the Private Bill Office of the day on which the same will be examined, but in the case of a bill for confirming any provisional order or certificate, he shall not give such notice until after the bill has been printed and circulated.

Memorials complaining of non-compliance.

74. Any parties shall be entitled to appear and to be heard, by themselves, their agents and witnesses, upon a memorial addressed to the examiner, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in such memorial, and the party (if any) who may be specially affected by the non-compliance with the standing orders have signed such memorial and shall not have withdrawn his signature thereto, and such memorial have been duly deposited in the Private Bill Office.

Proprietors dissenting at meeting under Orders 62 to 66 may petition and be heard.

75. In case any proprietor, shareholder, or member of or in any company, association, or co-partnership shall by himself, or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of Standing Orders 62 to 66, such proprietor, shareholder, or member shall be permitted to be heard by the examiner of petitions, on the compliance with such standing order, by himself, his agents and witnesses, on a memorial addressed to the examiner, such memorial having been duly deposited in the Private Bill Office.

Proof by affidavit.

76. The examiner may admit affidavits in proof of the compliance with the standing orders, or may require further evidence: and such affidavit shall be sworn, if in England, before a justice of the peace, or a commissioner for taking affidavits; if in Scotland, before any sheriff depute or his substitute; and if in Ireland, before any judge or assistant barrister of that part of the United Kingdom, or before a justice of the peace.

To report in cases of bills originating in the Lords.

77. The examiner shall make a report of the several cases in which he shall have certified that the standing orders have or have not been complied with in respect of any bills which, in pursuance of any report from the chairman of the Committee of Ways and Means, under Standing Order 79, shall originate in the House of Lords; and where they have not been complied with, he shall also report, separately, the facts upon which his decision is founded, and any special circumstances connected with the case.

Special report in certain cases.

78. In case the examiner shall feel doubts as to the due construction of any standing order in its application to a particular case, he shall make a special report of the facts, without deciding whether the standing order has or has not been complied with;

and in such case he shall indorse the petition with the words "special report," either alone, or if non-compliances with other standing orders shall have been proved, in addition to the words "standing orders not complied with."

Proceedings of, and in relation to, the Chairman of the Committee of Ways and Means, and the Counsel to Mr. Speaker.

79. The chairman of the Committee of Ways and Means shall, at the commencement of each session, seek a conference with the chairman of committees of the House of Lords for the purpose of determining in which House of Parliament the respective private bills should be first considered, and such determination shall be reported to the House.

Chairman of Ways and Means to seek a conference with the Chairman of Committees of House of Lords.

80. The chairman of the Committee of Ways and Means, with the assistance of the counsel to Mr. Speaker, shall examine all private bills, whether opposed or unopposed, and call the attention of the House, and also of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it; and copies of all such bills shall be laid by the agent before the said chairman and counsel not later than the day after the examiner of petitions shall have indorsed the petition for the bill.

Chairman of Ways and Means to examine all private bills, &c.

82. Two clear days at least before the day appointed for the consideration of any private bill by a committee, there shall be laid before the chairman of Ways and Means and the counsel to Mr. Speaker, by the agent, copies of every such bill as proposed to be submitted to the committee, and such copies shall be signed by the agent for the bill.

Copies of bill, as proposed to be submitted to committee to be laid before Chairman of Ways and Means, &c.

83. The chairman of the Committee of Ways and Means shall be at liberty, at any period after any private bill shall have been referred to a committee, to report to the House any special circumstances relative thereto which may appear to him to require it, or to inform the House that in his opinion any unopposed private bill should be treated as an opposed private bill.

Power to Chairman to report special circumstances, &c. to the House.

84. Three clear days at least before the consideration of any private bill ordered to lie upon the table, a copy of every such bill, as amended in committee, shall be laid by the agent before the chairman of the Committee of Ways and Means and the counsel to Mr. Speaker, and deposited at the office of the Board of Trade, and in the case of any bill required by the Standing Orders to be deposited at the office of the Local Government Board on or before the 21st day of December, shall also be deposited at the office of the Local Government Board.

Copy of bill as amended in committee to be laid before Chairman of Ways and Means, &c.

85. When it is intended to bring up any clause, or to propose any amendment on the consideration of any private bill ordered to

Clause or amendment on consideration

of bill, or on third reading, to be submitted to Chairman of Ways and Means, &c.

lie upon the table, or any verbal amendment on the third reading of any private bill, the same shall be submitted by the agent to the chairman of the Committee of Ways and Means and the counsel to Mr. Speaker, on the day on which notice is given thereof in the Private Bill Office.

Copy of amendments by House of Lords, and of proposed amendments thereto, to be laid before Chairman of Ways and Means, &c.

86. A copy of all amendments made in the House of Lords to any private bill, and of all amendments to such amendments intended to be proposed in this House, shall be laid by the agent before the chairman of the Committee of Ways and Means and the counsel to Mr. Speaker, before two o'clock on the day previous to that on which the same are respectively appointed for consideration by the House.

Proceedings of, and in relation to, the Referees on Private Bills.

Referees on private bills to be constituted.

87. The chairman of Ways and Means, with not less than three other persons, who shall be appointed by Mr. Speaker for such period as he shall think fit, shall be referees of the House on private bills; such referees to form one or more courts; three at least to be required to constitute each court: provided that the chairman of any second court shall be a member of this House; and provided that no such referee, if he be a member of this House, shall receive any salary.

Rules of practice and procedure to be made by Chairman of Ways and Means.

88. The practice and procedure of the referees, their times of sitting, order of business, and the forms and notices required in their proceedings, shall be prescribed by rules, to be framed by the chairman of Ways and Means, subject to alteration by him as occasion may require, but only one counsel shall appear before such referees in support of a private bill, or in support of any petition in opposition thereto, unless specially authorised by the referees. All such rules and alterations, when made, to be laid on the table of the House.

Referees on private bills to decide as to rights of petitioners to be heard upon their petitions, &c.

89. The referees shall decide upon all petitions against private bills, or against provisional orders, or provisional certificates, as to the rights of the petitioners to be heard upon such petitions, without prejudice, however, to the power of the select committee to which the bill is referred to decide upon any question as to such rights arising incidentally in the course of their proceedings.

Committees on bills empowered to refer questions in special cases to referees.

90. The select committee to which any bill has been referred may, subject to the approval of the chairman of Ways and Means, refer any question arising in the course of their inquiry, which they may deem suitable to be so referred, to the referees for their decision, such question to be stated in writing, and signed by the chairman of the committee. The referees, so soon as their inquiry has been completed, to return the question, with their decision certified thereon, to the chairman.

Proceedings of, and in relation to, the Select Committee on Standing Orders.

91. There shall be a committee, to be designated "The Select Committee on Standing Orders," to consist of eleven members, who shall be nominated at the commencement of every session, of whom five shall be a quorum.

Committee on Standing Orders.

92. When any report of the examiner of petitions for private bills, in which he shall report that the standing orders have not been complied with, shall have been referred to the Select Committee on Standing Orders, and after the petition for the bill shall have been duly presented, they shall report to the House whether such standing orders ought or ought not to be dispensed with, and whether in their opinion the parties should be permitted to proceed with their bill, or any portion thereof, and under what (if any) conditions.

To report whether Standing Orders ought or ought not to be dispensed with.

93. The Select Committee on Standing Orders shall have power to report on the cases referred to them in respect of private bills originating in the House of Lords, notwithstanding that the petitions for the same shall not have been presented to the House.

In cases of bills originating in Lords.

94. When any special report from the examiner of petitions as to the construction of a standing order shall have been referred to the Select Committee on Standing Orders, they shall determine, according to their construction of the standing order, and on the facts stated in such report, whether the standing orders have or have not been complied with; and they shall then either report to the House that the standing orders have been complied with, or shall proceed to consider the question of dispensing with the standing orders, as the case may be.

Proceeding in case of special report.

95. When any petition, praying that any of the sessional or standing orders of the House relating to private bills may be dispensed with, shall stand referred to the Select Committee on Standing Orders, they shall report to the House whether such sessional or standing orders ought or ought not to be dispensed with.

To report whether Sessional or Standing Orders ought or ought not to be dispensed with.

96. When any petition for the re-insertion of any petition for a private bill in the general list of petitions shall stand referred to the Select Committee on Standing Orders, they shall report to the House whether in their opinion such petition ought or ought not to be re-inserted, and if re-inserted, under what (if any) conditions.

To report whether petition ought or ought not to be re-inserted in the general list.

97. When any clause or amendment proposed on the consideration of any private bill ordered to lie upon the table shall have been referred to the Select Committee on Standing Orders, they shall report to the House whether such clause or amendment should be adopted by the House or not, or whether the bill should be re-committed.

To report whether clause or amendment on consideration of bill should be adopted by House or not, or whether bill should be re-committed.

Proceedings of, and in relation to, the Committee of Selection, and of the General Committee on Railway and Canal Bills.

Committee of Selection.

98. There shall be a committee, to be designated "The Committee of Selection," to consist of the chairman of the Select Committee on Standing Orders, who shall be *ex officio* chairman thereof, and five other members, who shall be nominated at the commencement of every session, of which committee three shall be a quorum.

General Committee on Railway and Canal Bills.

99. There shall be a committee, to be designated "The General Committee on Railway and Canal Bills," which shall be nominated at the commencement of every session by the committee of selection, of which committee three shall be a quorum.

Committee of Selection may discharge members and add others.

100. The committee of selection may, from time to time, discharge members from further attendance on such general committee, and add other members in their room, and shall appoint the chairman of such committee.

General Committee to appoint chairman.

101. The general committee on railway and canal bills shall appoint from among themselves the chairman of each committee on a railway or canal bill, or on a group of such bills, and may change the chairman so appointed from time to time.

Printed copies of bills to be laid before Committee of Selection and General Committee.

102. Printed copies of all private bills, not being railway or canal bills, shall be laid before the committee of selection, and printed copies of all railway and canal bills before the general committee on railway and canal bills, by the parties promoting the same, at the first meeting of the said committees respectively.

Committee of Selection and General Committee to group private bills.

103. The committee of selection may, if they think fit, form into groups all private bills, not being railway or canal bills, and the general committee on railway and canal bills may form into groups all railway and canal bills, which, in their opinion, it may be expedient to submit to the same committee, and such groups shall be published in the votes.

Railway and canal unopposed bills.

104. The general committee on railway and canal bills may, whenever they shall think fit, refer any unopposed railway or canal bill to the chairman of the committee of Ways and Means, together with two other members not locally or otherwise interested, or one such member and a referee, to be nominated by the committee of selection.

Committee of Selection and General Committee on railway, &c. bills to appoint first sitting of committee.

105. The committee of selection in the case of all private bills other than railway and canal bills, and the general committee on railway and canal bills in the case of such bills, shall, subject to the order in regard to the interval between the second reading of every private bill and the sitting of the committee thereupon, fix the time for holding the first sitting of every committee on a private bill which shall have been referred to either of the said committees.

106. The committee of selection shall name the bill or bills which shall be taken into consideration on the first day of the meeting of the committee on any group of bills not being railway or canal bills; and the general committee on railway and canal bills shall name the bill or bills which shall be taken into consideration on the first day of the meeting of each committee on any group of such bills.

Committee of Selection and General Committee to name bill or bills to be considered on the first day.

107. The committee of selection shall consider no bill as an opposed private bill, unless, not later than ten clear days after the first reading thereof, a petition shall have been presented against it, in which the petitioner or petitioners shall have prayed to be heard, by themselves, their counsel or agents, or unless, where no such petition shall have been presented, the chairman of the Committee of Ways and Means shall have reported to the House that in his opinion any bill ought to be so treated.

What bills not to be considered opposed.

108. The committee of selection shall refer every opposed private bill which shall have been referred to them, or any group of such bills, to a chairman and three members and a referee, or a chairman and three members, not locally or otherwise interested therein.

Constitution of committees on opposed private bills.

109. The committee of selection shall refer every unopposed private bill, which shall have been referred to them, not being a road bill, to the chairman of the Committee of Ways and Means, together with one of the members ordered to prepare and bring in the same, and one other member not locally interested therein, or a referee, if the bill shall have originated in this House; and if the bill shall have been brought from the House of Lords to the chairman of the Committee of Ways and Means, together with two other members, of whom one at least shall not be locally or otherwise interested therein, or one member and a referee.

Constitution of committees on unopposed private bills.

111. The committee of selection shall give each member not less than seven days' notice, by publication in the votes or otherwise, of the week in which it will be necessary for him to be in attendance for the purpose of serving, if required, as a member, not locally or otherwise interested, of a committee on a private bill.

Committee of Selection to give notice to members.

112. The committee of selection shall give to each member sufficient notice of his appointment as a member of a committee on any private bill, or group of such bills, and, in every case where a declaration is required to be signed and returned by such member, shall transmit to him a blank form of the declaration required, with a request that it may forthwith be returned properly filled up and signed.

Notice of appointment and declaration to be transmitted to members.

113. The committee of selection shall report to the House the name of every member from whom they shall not have received in due time such declaration, so filled up and signed, or, in lieu thereof, an excuse which they shall deem sufficient.

Members returning no answer to be reported.

Committee of Selection may substitute members for others.

114. The committee of selection shall have the power of discharging any member or members of a committee, and of substituting other members.

Committee of Selection to send for persons, &c.

115. The committee of selection shall have power, in the execution of their duties, to send for persons, papers, and records.

Proceedings of Committees on Opposed Bills.

Committees on railway and canal bills.

116. The committee on every opposed railway and canal bill, or group of railway and canal bills, shall be composed of four members and a referee, or four members not locally or otherwise interested in the bill or bills referred to them; the chairman to be appointed by the General Committee on Railway and Canal Bills, and three other members by the committee of selection.

Declaration of members.

118. Each member of a committee on an opposed private bill, or group of such bills, shall, before he be entitled to attend and vote on such committee, sign the following declaration:—

I do hereby declare, that my constituents have no local interest, and that I have no personal interest, in such bill; and that I will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

And no such committee shall proceed to business until the said declaration shall have been so signed by each of such members.

Quorum to be always present.

119. Committees shall not be allowed to proceed if more than one of their members be absent, unless by special leave of the House.

Members not to absent themselves.

120. No member of a committee on an opposed private bill shall absent himself from his duties thereon, except in the case of sickness, or by order of the House.

When chairman absent.

121. If the chairman shall be absent from the committee, the member next in rotation on the list of members who shall be present shall act as chairman; but in the case of railway and canal bills only until the general committee on such bills shall have appointed, if they shall so think fit, another chairman.

Proceedings to be suspended if quorum not present.

122. If at any time during the sitting of any committee more than one of the members be absent, the chairman shall suspend the proceedings of such committee; and if at the expiration of one hour from the time fixed for the meeting of the committee, or from the time when the chairman shall have so suspended the proceedings, more than one member be absent, the committee shall be adjourned to the next day on which the House shall sit, and then shall meet at the hour on which such committee would have sat, had no such adjournment taken place.

123. If any of the members shall not be present within one hour after the time appointed for the meeting of the committee, or if any member shall absent himself from his duties on such committee, every such member shall be reported to the House at its next sitting.

Members absent to be reported to the House.

124. If, at any time after the committee on a bill shall have been formed, a quorum of members required by the standing orders cannot attend in consequence of any of the members who shall have duly qualified to serve on such committee having become incompetent to continue such service by having been placed on an election committee, or by death or otherwise, the chairman shall report the circumstances of the case to the House, in order that such measures may be taken by the House as shall enable the members still remaining on the committee to proceed with the business referred to such committee, or as the emergency of the case may require.

Absence of members by death or otherwise to be reported.

125. All questions before committees on private bills shall be decided by a majority of voices, including the voice of the chairman; and whenever the voices are equal, the chairman shall have a second or casting vote.

Questions to be decided by majority of voices.

126. The committee on each group of bills shall take the bill or bills first into consideration which shall have been named by the committee of selection, or by the general committee on Railway and Canal Bills: and the committee shall, from time to time, appoint the day on which they will enter upon the consideration of each of the remaining bills, and on which they will require the parties severally promoting or opposing the same to enter appearances; and two clear days' notice, at the least, of such appointment shall be given by the clerk attending the committee to the clerks in the Private Bill Office; and in case the committee shall postpone the consideration of any bill, notice shall be given of the day to which the same is postponed.

Committee on group to consider that bill first which Committee of Selection or General Committee shall have named, and to appoint day for consideration of remaining bills, of which clerk of committee to give notice.

127. Every committee on an opposed private bill shall report specially to the House the cause of any adjournment over any day on which the House shall sit.

Causes of adjournment to be specially reported.

128. No petition against a private bill, or a bill to confirm any provisional order or provisional certificate, shall be taken into consideration by the committee on such bill, which shall not distinctly specify the ground on which the petitioners object to any of the provisions thereof; and the petitioners shall be only heard on such grounds so stated; and if it shall appear to the said committee that such grounds are not specified with sufficient accuracy, the committee may direct that there be given in to the committee a more specific statement, in writing, but limited to such grounds of objection so inaccurately specified.

Petition against bill not to be considered except grounds of objection sufficiently specified.

129. No petitioners against any private bill, or any bill to confirm any provisional order or provisional certificate, shall be heard

Petitioners against bill not to be

heard unless petition presented not later than ten clear days after first reading, &c.

before the committee on the bill, unless their petition shall have been prepared and signed in strict conformity with the rules and orders of this House, and shall have been presented to this House by having been deposited in the Private Bill Office, in the case of private bills, not later than ten clear days after the first reading of such bill, and in the case of bills to confirm any provisional order or provisional certificate, not later than seven clear days after the report of the examiner on such bill, except where the petitioners shall complain of any matter which may have arisen during the progress of the bill before the said committee, or of any proposed additional provision, or of the amendments as proposed in the filled-up bill deposited in the Private Bill Office.

Competition to be a ground of *locus standi*

130. It shall be competent to the referees on private bills to admit petitioners to be heard upon their petitions against a private bill, on the ground of competition, if they shall think fit.

In what cases shareholders to be heard.

131. Where a bill is promoted by an incorporated company, shareholders of such company shall not be entitled to be heard before the committee against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company.

Dissenting shareholders to be heard.

132. In case any proprietor, shareholder, or member of or in any company, association, or co-partnership, shall by himself or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of Standing Orders 62 to 66, or at any meeting called in pursuance of any similar standing order of the House of Lords, such proprietor, shareholder, or member shall be permitted to be heard by the committee on the bill on a petition presented to the House, such petition having been duly deposited in the Private Bill Office.

In what cases railway companies to be heard.

133. Where a railway bill contains provisions for taking or using any part of the lands, railway stations or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against such provisions or against the preamble and clauses of such bill.

Chamber of Commerce, &c. may be heard in relation to rates and fares.

133a. Where a Chamber of Commerce or Agriculture or other similar body sufficiently representing a particular trade or business in any district to which any railway bill relates, petition against the bill, alleging that such trade or business will be injuriously affected by the rates and fares proposed to be authorised by the bill, or is injuriously affected by the rates and fares already authorised by Acts relating to the railway undertaking, it shall be competent for the referees on private bills, if they think fit, to admit the petitioners to be heard on such allegation, against the bill, or any part thereof, or against the rates and fares authorised by the said Acts or any of them :

The provisions of this order, relative to rates and fares already authorised, extend to traders and freighters, and to a single trader

in any case where a *locus standi* would have been allowed to them or him if this order had not been made.

Nothing in this order shall authorise the referees to entertain any question within the jurisdiction of the railway commissioners.

134. It shall be competent to the referees on private bills to admit the petitioners, being the municipal or other authority having the local management of the metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill, if they shall think fit.

Municipal authorities and inhabitants of towns, &c.

134a. The municipal or other local authority of any town or district alleging in their petition that such town or district may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill.

Local authorities to have a *locus standi* against lighting and water bills.

136. In all cases of opposed private bills, in which no parties shall have appeared on the petitions against such bills, or having appeared shall have withdrawn their opposition before the evidence of the promoters shall have been commenced, the committees on such bills shall forthwith refer them back, with a statement of the facts, if not railway or canal bills, to the committee of selection, and if railway and canal bills, to the General Committee on Railway and Canal Bills, who shall deal with them as unopposed bills.

When opposed bills may be treated as unopposed.

Proceedings of, and in relation to, Committees on Bills, whether Opposed or Unopposed.

138. At the first meeting of the committee, copies of the bill, as proposed to be submitted to them, and signed by the agent, shall be laid by him before each member of the committee.

Filled-up copies of bill to be laid before each member.

139. No member, locally or otherwise interested, of a committee on any unopposed private bill shall have a vote on any question that may arise, but every such member shall be entitled to attend and take part in the proceedings of the committee.

Local member not to vote.

140. The names of the members attending each committee shall be entered by the clerk on the minutes of the committee; and if any division shall take place in the committee, the clerk shall take down the names of members voting in any such division, distinguishing on which side of the question they respectively vote, and that such lists be given in with the report to the House.

Names of members to be entered on minutes.

141. No committee shall have power to examine into the compliance or non-compliance with such standing orders as are directed to be proved before the examiner of petitions for private bills, unless by special order of the House.

Committee on bill not to inquire into certain standing orders.

Committee
may admit
affidavits in
proof of
compliance
with standing
orders.

142. The committee on any private bill may admit affidavits in proof of the compliance with such standing orders of the House as are directed to be proved before them, or may require further evidence; and such affidavits shall be sworn, if in England, before a justice of the peace, or a commissioner for taking affidavits; if in Scotland, before any sheriff-depute or his substitute; and if in Ireland, before any judge or assistant barrister of that part of the United Kingdom, or before a justice of the peace.

Consents,
how to be
proved.

143. The committee may admit proof of the consents of parties concerned in interest in any private bill by affidavits sworn as aforesaid, or by the certificate in writing of such parties, whose signatures to such certificate shall be proved by one or more witnesses, unless the committee shall require further evidence.

Clause com-
pelling pay-
ment of sub-
scriptions.

144. In all bills presented to the House for carrying on any work by means of a company, commissioners or trustees, provision shall be made for compelling persons who have subscribed any money towards carrying any such work into execution, to make payment of the sums severally subscribed by them.

Level of
roads.

145. Where the level of any road shall be altered in making any public work, the ascent of any turnpike road, or of any road in Ireland so defined in the Railways Clauses Consolidation Act, 1845, shall not be more than one foot in thirty feet, and of any other public carriage road not more than one foot in twenty feet; and a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected.

Fence to
bridge.

Committee to
report
specially on
railway, &c.
bills seeking
powers to levy
tolls, &c. in
excess of
those already
authorised.

145a. In the case of any bill relating to a railway, tramway, canal, dock, harbour, navigation, pier or port seeking powers to levy tolls, rates or duties in excess of those already authorised for that undertaking, or usually authorised in previous years for like undertakings, the bill shall not be reported by the committee until a report from the Board of Trade on the powers so sought has been laid before the committee; and the committee shall report specially to the House in what manner the recommendations or observations in the report of the Board of Trade, and also in what manner the clauses of the bill relating to the powers so sought have been dealt with by the committee.

Plan, &c. to
be signed by
chairman.

146. Every plan, and book of reference thereto, which shall be produced in evidence before the committee upon any private bill (whether the same shall have been previously lodged in the Private Bill Office or not), shall be signed by the chairman of such committee, with his name at length; and he shall also mark with the initials of his name every alteration of such plan and book of reference, which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the Private Bill Office.

147. The chairman of the committee shall sign, with his name at length, a printed copy of the bill (to be called the Committee Bill), on which the amendments are to be fairly written ; and also sign, with the initials of his name, the several clauses added in the committee.

Committee bill and clauses to be signed by chairman.

148. The chairman of the committee shall report to the House that the allegations of the bill have been examined ; and whether the parties concerned have given their consent (where such consent is required by the standing orders) to the satisfaction of the committee.

Chairman to report on allegations of bill, &c.

149. The chairman of the committee shall report the bill to the House, whether the committee shall or shall not have agreed to the preamble or gone through the several clauses, or any of them ; or where the parties shall have acquainted the committee that it is not their intention to proceed with the bill ; and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report.

Chairman to report bill in all cases.

150. Whenever a recommendation shall have been made in a report on a private bill from a department of the government referred to the committee, the committee shall notice such recommendation in their report, and shall state their reasons for dissenting, should such recommendation not be agreed to.

Committee to notice recommendation from government departments when referred.

151. Whenever the House shall order that any bill for confirming a provisional order or a provisional certificate be referred to the committee of selection with respect to any order or certificate to be confirmed thereby, the proceedings of the select committee to which the bill is referred, and of the referees, shall be conducted in like manner as in the case of private bills, and shall be subject to the same rules and orders of the House so far as they are applicable, except those which relate to the payment of fees by the promoters of such provisional order or certificate.

Proceedings on bills for confirming provisional orders, &c.

152. The minutes of the committee on every private bill shall be brought up and laid on the table of the House, with the report of the bill.

Minutes of committee.

Railway Bills.

153. In the case of a railway bill, no company shall be authorised to raise, by loan or mortgage, a larger sum than one-third of their capital ; and, until fifty per cent. on the whole of the capital shall have been paid up, it shall not be in the power of the company to raise any money, by loan or mortgage, unless the committee on the bill shall report that such restrictions or either of them ought not to be enforced, with the reasons on which their opinion is founded.

Restrictions as to mortgage.

Limiting
ascent of
roads where
level is
altered.

154. Where the level of any road shall be altered in making any railway, the ascent of any turnpike road, or of any road in Ireland, so defined in the Railways Clauses Consolidation Act, 1845, shall not be more than one foot in thirty feet, and of any other public carriage-road not more than one foot in twenty feet, unless a report thereupon from some officer of the Board of Trade shall be laid before the committee on the bill, and unless the committee, after considering such report, if they shall disagree with the said report, shall recommend steeper ascents, with the reasons and facts upon which their opinion is founded: Also, a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected.

Railway not
to cross rail-
ways or roads
on a level
unless com-
mittee report,
&c.

155. No railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam-engine, shall be made across any railway, turnpike-road, or other public carriage-way on the level, unless a report thereupon from some officer of the Board of Trade shall be laid before the committee on the bill, and unless the committee, after considering such report, if they shall disagree with the said report, shall recommend such level crossing, with the reasons and facts upon which their opinion is founded; and in every clause authorising a level crossing, the number of lines of rails authorised to be made at such crossing shall be specified.

Railway
company not
to acquire
canals, docks,
&c. unless
committee
report, &c.

156. No railway company shall be authorised to construct or enlarge, purchase or take on lease, or otherwise appropriate any canal, dock, pier, harbour or ferry, or to acquire and use any steam-vessels for the conveyance of goods and passengers, or to apply any portion of their capital or revenue to other objects, distinct from the undertaking of a railway company, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded.

Reports of
public depart-
ments.

157. Every committee on a railway bill shall report specially to the House,—

Whether any report from any public department in regard to the bill, or the objects thereof, has been referred by the House to the committee; and, if so, in what manner the several recommendations contained in such report have been dealt with by the committee:

Crossing rail-
ways, &c. on
a level.

Whether it be intended that the railway shall cross on a level any railway, turnpike road, or highway:

Other circum-
stances.

And any other circumstances which, in the opinion of the committee, it is desirable that the House should be informed of.

Clause to be
inserted in
railway and
tramway bills
imposing

158. In every railway bill and tramway bill, whereby the construction of any new line of railway or tramway is authorised, or the time for completing any line already authorised is extended, promoted by an existing railway company or tramway company

which is possessed of a railway or tramway already opened for public traffic, and which has, during the year last past, paid dividends on its ordinary share capital, and which does not propose to raise under the bill a capital greater than its existing authorised capital, there shall be inserted a clause to the following effect, viz. :—

penalty, unless line be opened.

(A.) If the company fail within the period limited by this Act to complete the railway or tramway authorised to be made by this Act, the company shall be liable to a penalty of fifty pounds a day for every day after the expiration of the period so limited until the said railway or tramway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works; and the said penalty may be applied for by any landowner or other person claiming to be compensated in accordance with the provisions of the next following section of this Act, and in the same manner as the penalty provided in the 3rd section of the Act 17 & 18 Vict. c. 31, known as "The Railway and Canal Traffic Act, 1854;" and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such court or judge as is specified in the said 3rd section of the Act 17 & 18 Vict. c. 31, to an account opened or to be opened in the name and with the privity of her Majesty's Paymaster-General on behalf of the Chancery Division of the High Court of Justice in England [the Queen's Remembrancer of the Court of Exchequer in Scotland, or the Accountant-General of the Court of Chancery in Ireland (according as the railway or tramway is situate in England, Scotland, or Ireland,)] in the bank named in such order, and shall not be paid thereout except as hereinafter provided; but no penalty shall accrue in respect of any time during which it shall appear, by a certificate to be obtained from the Board of Trade, that the company was prevented from completing or opening such line by unforeseen accident or circumstances beyond their control: Provided, that the want of sufficient funds shall not be held to be a circumstance beyond their control.

Railway, Tramway, or Subway Deposits.

In every railway bill, or tramway bill, or subway bill, whereby the construction of any new line is authorised, or the time for completing any line already authorised is extended; if such bill be promoted by an existing railway company, or tramway company, or subway company, which is not possessed of a railway, tramway, or subway, already opened for public traffic, or which has not during the year last past paid dividends on its ordinary share capital; or by an existing railway or tramway company, or subway company, when the capital to be raised under the bill is greater than the existing authorised capital of the company, or by persons not already incorporated, a clause to the following effect shall be inserted, viz. :—

Clause to be inserted, providing that deposit be impounded as security for completion of the line.

(B.) Whereas, pursuant to the standing orders of both Houses of Parliament, and to an Act passed in the session of Parliament

held in the ninth and tenth years of her present Majesty, c. 20, a sum of £ , being five per cent. upon the amount of the estimate in respect of the railway [or tramway or subway] authorised by this Act, has been deposited with the court, that is to say, the Chancery Division of the High Court of Justice in England [or the Court of Exchequer in Scotland, or the Court of Chancery in Ireland, as the case may be]; [or exchequer bills, stocks, or funds to the amount of £ , have been deposited or transferred pursuant to the said Act, as the case may be], in respect of the application to Parliament for this Act (which sum, exchequer bills, stocks, or funds, as the case may be, is or are in this Act referred to as "the deposit fund"): Be it enacted, that notwithstanding anything contained in the said recited Act, the deposit fund shall not be paid or transferred to or on the application of the person or persons, or the majority of the persons, named in the warrant or order issued in pursuance of the said Act, or the survivors or survivor of them (which persons, survivors, or survivor, are or is in this Act referred to as the "depositors"), unless the company shall, previously to the expiration of the period limited by this Act for completion of the railway [or tramway or subway] hereby authorised to be made [or the time for completing which is hereby extended], open the said railway [or tramway or subway] for public traffic [or, if a passenger railway, for the public conveyance of passengers]: Provided, that if within such period as aforesaid the company open any portion of the said railway [or tramway or subway] for public traffic [or, if a passenger railway, for the public conveyance of passengers], then on production of a certificate of the Board of Trade, specifying the length of the portion of the said railway [or tramway or subway] opened as aforesaid, and the portion of the deposit fund which bears to the whole of the deposit fund the same proportion as the length of the said railway [or tramway or subway] so opened bears to the entire length of the said railway [or tramway or subway] hereby authorised, the court shall, on the application of the depositors, order the said portion of the deposit fund so specified in such certificate as aforesaid to be paid or transferred to them, or as they shall direct; and the certificate of the Board of Trade shall, if signed by the secretary, or by an assistant secretary of the said board, be sufficient evidence of the facts therein certified; and it shall not be necessary to produce any certificate of this Act having passed, anything in the recited Act to the contrary notwithstanding.

Application of deposit or penalty in compensation to parties injured.

In every railway bill, or tramway bill, or subway bill, whereby the construction of any new line of railway, or tramway, or subway is authorised, or the time for completing any line already authorised is extended, a clause to the following effect shall be inserted:—

(C.) If the company do not, previously to the expiration of the period limited by this Act for the completion of the railway [or tramway or subway] hereby authorised to be made (or the time for completion which is hereby extended) complete the said railway [or tramway or subway] and open it for public traffic [or, if a passenger railway, for the public conveyance of passengers,] then and

in every such case the deposit fund, or so much thereof as shall not have been paid to the depositors, or any sum of money recovered by way of penalty as aforesaid shall be applicable, and after due notice in the *London Gazette* [or *Edinburgh* or *Dublin Gazette*, as the case may require,] shall be applied towards compensating any landowners or other persons whose property may have been interfered with, or otherwise rendered less valuable, by the commencement, construction, or abandonment of the said railway [or tramway or subway], or any portion thereof, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by this Act [and also (in the case of a tramway) in compensating all road authorities for the expense incurred by them in taking up any tramway, or materials connected therewith, placed by the company in or on any road vested in or maintainable by such road authorities respectively, and in making good all damage caused to such roads by the construction or abandonment of such tramway], and for which injury or loss no compensation or inadequate compensation shall have been paid, and shall be distributed in satisfaction of such compensation as aforesaid, in such manner and in such proportions as to the court may seem fit; and if no such compensation shall be payable, or if a portion of the deposit fund (or of the sum or sums of money recovered by way of penalty as aforesaid) shall have been found sufficient to satisfy all just claims in respect of such compensation, then the deposit fund (or the sum or sums of money recovered by way of penalty as aforesaid), or such portion thereof as may not be required as aforesaid, shall either be forfeited to her Majesty, and shall accordingly be paid or transferred to or for the account of her Majesty's Exchequer, in such manner as the Court thinks fit to order on the application of the solicitor to her Majesty's Treasury, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, or, in the discretion of the Court, if the company is insolvent and has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to such receiver, or to the liquidator or liquidators of the company, or be otherwise applied as part of the assets of the company for the benefit of the creditors thereof: Provided, that until the deposit fund shall have been repaid to the depositors, or shall have become otherwise applicable as hereinbefore mentioned, any interest or dividends accruing thereon shall from time to time, and as often as the same shall become payable, be paid to or on the application of the depositors.

N.B.—If the clause lettered (A) is inserted in the bill, the proviso at the end of the clause lettered (C) shall be omitted.

(D.) If the railway [or tramway] authorised by this Act shall not be completed within the period limited by this Act, then, on the expiration of such period, the powers by this Act granted to the company for making and completing the said railway [or tramway], or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed.

Time limited
for comple-
tion of line.

The period limited shall not in the case of a new railway line exceed five years [or in the case of a new tramway line two years], and the extension of time for completion shall not in the case of a railway line exceed three years [or in the case of a tramway line one year]. In the case of extension of time the additional period shall be computed from the expiration of the period sought to be extended.

Where preceding provisions are inapplicable.

In any railway bill or tramway bill to which the preceding provisions are not applicable, the committee on the bill shall make such other provision as they shall deem necessary for ensuring the completion of the line of railway or tramway.

In case of bill for abandonment of railway, tramway or subway, and release of deposit money, committee to report.

158a. In the case of every bill authorising, before the expiration of the time limited for the completion of a railway, tramway, or subway, the abandonment thereof or of any part thereof, and the release of any deposit money impounded as security for such completion, a report from the Board of Trade respecting the bill and the objects thereof shall be presented to this House, and be referred to the committee on the bill, and the committee shall report specially to the House in what manner the several recommendations contained in the report from the Board of Trade have been dealt with by the committee.

Committee to fix the tolls and charges.

159. The committee on every railway bill shall fix the tolls and shall determine the maximum rates of charge for the conveyance of passengers, with a due amount of luggage and of goods on such railway, and such rates of charge shall include the tolls and the costs of locomotive power, and every other expense connected with the conveyance of passengers, with a due amount of luggage and of goods upon such railway; but if the committee shall not deem it expedient to determine such maximum rates of charge, a special report, explanatory of the grounds of their omitting so to do, shall be made to the House, which special report shall accompany the report of the bill.

In bills granting preference in payment of interest, &c., provision to be made that the same shall not prejudice former grants of preference, unless committee report otherwise.

160. In every railway bill by which it is proposed to authorise the company to grant any preference or priority in the payment of interest or dividends on any shares or stock, there shall be inserted a clause providing that the granting of such preference or priority shall not prejudice or affect any preference or priority in the payment of interest or dividends on any other shares or stock which shall have been granted by the company in pursuance of or which may have been confirmed by any previous Act of Parliament, or which may otherwise be lawfully subsisting, unless the committee on the bill shall report that such provision ought not to be required, with the reasons on which their opinion is founded.

Company not to alter any preference previously granted.

161. No railway company shall be authorised to alter the terms of any preference or priority of interest or dividend which shall have been granted by such company in pursuance of or which may have been confirmed by any previous Act of Parliament, or which may otherwise be lawfully subsisting, unless the committee on the

bill report that such alteration ought to be allowed, with the reasons on which their opinion is founded, together with the number of preference shareholders who have assented to or dissented from such alteration.

162. No powers of purchasing, hiring, or providing steam vessels, shall be contained in a bill by which any other powers are sought to be obtained by a railway company, except when the transit by such steam vessels is required to connect portions of railway belonging to or proposed to be constructed by such company.

No powers of purchasing, &c. steam vessels in railway bills.

163. No powers of purchase, sale, lease, or amalgamation shall be given to any railway company, with reference to any other undertaking already authorised by any Act or Acts, nor to any other incorporated company, with reference to any railway, unless, previously to the application to parliament for such purpose, the several companies who may be parties to such purchase, sale, lease, or amalgamation shall have proved to the satisfaction of the Board of Trade, that they have respectively paid up one-half of the capital authorised to be raised by any previous Act or Acts by means of shares, and have expended for the purposes of such Act or Acts a sum equal thereto; and in case such powers shall be applied for in respect of works intended to be authorised by any bill or bills of the same session, it shall be proved to the satisfaction of the Board of Trade that such companies have respectively paid up one-half of the amount of their capital, and that the company proposed to be empowered to construct such works have included in such amount the capital proposed to be authorised by such bill or bills; and that no such powers shall be given in respect of works intended to be authorised by any Act or Acts for which it is intended to apply in any subsequent session.

No powers of purchase, &c. to be given, except after proof of certain matters before Board of Trade, &c.

164. No railway company shall be authorised, except for the execution of its original line or lines sanctioned by Act of Parliament, to guarantee interest on any shares which it may issue for creating additional capital, or to guarantee any rent or dividend to any other railway company, until such first-mentioned company shall have completed and opened for traffic such original lines.

Railway company not to guarantee interest or dividend before completion of line.

165. In bills for the amalgamation of railway companies, the amount of capital created by such amalgamation shall in no case exceed the sum of the capitals of the companies so amalgamated.

Limitation of capital on amalgamation of companies.

166. In bills for empowering any railway company to purchase any other railway, no addition shall be authorised to be made to the capital of the purchasing company beyond the amount of the capital of the railway purchased; and in case such railway shall be purchased at a premium, no addition on account of such premium shall be made to the capital of the purchasing company.

Additional capital of purchasing company not to amount to more than capital of company purchased.

167. A clause shall be inserted in every railway bill prohibiting the payment of any interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him,

No interest to be paid on calls.

except such interest or money advanced by any shareholder beyond the amount of the calls actually made, as is in conformity with "The Companies Clauses Consolidation Act, 1845," or "The Companies Clauses Consolidation (Scotland) Act, 1845," as the case may be, and except such interest (if any) as the committee on the bill may, according to the circumstances of the case, think fit to allow, subject always to the following conditions :—

- (1.) That the rate of interest allowed by the committee do not in any case exceed four per centum per annum ;
- (2.) That interest be allowed to be paid in respect only of the time allowed by the bill for the completion of the railway, or such less time as the committee think fit ;
- (3.) That payment of interest be not allowed to begin until the railway company have obtained a certificate of the Board of Trade to the effect that two-thirds at least of the share capital authorised by the bill in respect whereof interest may be paid, have (*sic*) been actually issued and accepted, and are (*sic*) held by shareholders who, or whose executors, administrators, successors, or assigns, are legally liable for the same ;
- (4.) That interest do not accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear ;
- (5.) That the aggregate amount to be so paid for interest be estimated and stated in the bill, and be not deemed capital within Standing Order 153 ;
- (6.) That notice of the company having power so to pay interest be given in every prospectus, advertisement or other document of the company inviting subscriptions for shares and in every certificate of shares ; and
- (7.) That the half-yearly accounts of the company do show the amount on which, and the rate at which, interest has been paid ;—

and the company shall be authorised by the bill to pay interest accordingly, but not further or otherwise.

If in any case the committee on the bill do not think fit to allow any such interest, then there shall be inserted in the bill provisions making liable to penalties recoverable summarily, any director or officer of the company who shall, directly or indirectly, pay or procure to be paid any interest or dividend prohibited as aforesaid, and making illegal and void any contract entered into by the company, or the directors thereof, or any of them, under which payment of any interest or dividend prohibited as aforesaid shall be directly or indirectly provided for.

The bill shall not be reported by the committee until there has been laid before them a report from the Board of Trade respecting any proposed payment of interest ; and the committee shall report specially to the House in what manner they have dealt with the recommendations or observations in the report of the Board of Trade.

168. A clause shall be inserted in every railway bill by which any money is authorised to be raised, prohibiting the company from paying, out of such money, the deposits required by the standing orders to be made for the purposes of any application to Parliament for a bill for the construction of another railway.

Clause as to deposits not to be paid out of capital.

169. The following clause shall be inserted in all railway bills passing through this House:—

Clause as to railway not to be exempt from any general Act.

And be it further enacted, that nothing herein contained shall be deemed or construed to exempt the railway by this or the said recited Acts authorised to be made from the provisions of any general Act relating to railways now in force, or which may hereafter pass during this or any future session of Parliament, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges authorised by this Act [or by the said recited Acts].

170. In every railway bill, tramway bill and subway bill the length of each railway, tramway and subway be set forth in miles, furlongs, chains, and yards, or decimals of a chain, in the clause describing the works, with a statement in the case of each tramway whether it is a single or a double line.

Length of railway, tramway and subway to be set forth and specified in clause describing the works.

Agreements.

174. Where it is sought by any bill to give Parliamentary sanction to any agreement, such agreement shall be annexed to the bill as a schedule thereto, and shall be printed *in extenso* therewith.

Agreement to be annexed to bill.

Houses of the Labouring Classes.

183a. In the case of every bill which contains power to take lands compulsorily or by agreement, clauses shall be inserted:—

Clause to be inserted in bills.

- (1.) Providing that the promoters shall not, in exercise of such power, purchase or acquire in any parish in the metropolis twenty or more houses, or as regards England and Wales, exclusive of the metropolis, in any city or borough, or other urban sanitary district, or in any parish or part of a parish not being within an urban sanitary district, or in Scotland in any district within the meaning of "The Public Health (Scotland) Act, 1867," or in Ireland in any urban sanitary district as defined by "The Public Health (Ireland) Act, 1878," ten or more houses, occupied either wholly or partially by persons belonging to the labouring class as defined by this Order as tenants or lodgers, unless and until

- (a.) They shall have obtained the approval of the central authority to a scheme for providing new dwellings for the persons residing in such houses, or for such number or proportion of such persons as the central authority shall, after inquiry, deem necessary, having regard to the number of persons residing in the houses:

liable to be taken, and working within one mile therefrom, and to the amount of vacant suitable accommodation in the immediate neighbourhood of the houses liable to be taken, or to the place of employment of such persons, and to all the other circumstances of the case; and

- (b.) They shall have given security to the satisfaction of the central authority for the carrying out of the scheme;
- (2.) Imposing adequate penalties on the promoters in the event of houses being acquired or appropriated for the purposes of the bill in contravention of the foregoing provisions; and,
- (3.) Conferring on the promoters and on the central authority respectively any powers that may be necessary to enable full effect to be given to the said scheme.

Payment of expenses incurred by central authority.

Definition of expression "labouring class," &c.

The committee on the bill may provide that the expenses or any part of the expenses incurred by the central authority under this Order shall be defrayed by the promoters of the bill, or out of moneys to be raised under the bill :

In this Standing Order, and in Standing Order No. 38, the expression "labouring class" includes mechanics, artizans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them :

The expression "the metropolis" means the metropolis as defined by the Metropolis Management Act, 1855 :

The expression "central authority" means, as regards the metropolis or Scotland, the Secretary of State for the Home Department, and as regards England and Wales, exclusive of the metropolis, the Local Government Board, and as regards Ireland, the Local Government Board for Ireland :

The word "bill" includes a bill confirming a provisional order.

PART IV.

THE ORDERS REGULATING THE PRACTICE OF THE HOUSE WITH REGARD TO PRIVATE BILLS.

Petition for bill, and how to be signed.

193. No private bill shall be brought into this House but upon a petition first presented, which shall have been duly deposited in the Private Bill Office, and indorsed by one of the examiners, with a printed copy of the proposed bill annexed : and such petition shall be signed by the parties, or some of them, who are suitors for the bill.

195. All petitions for private bills shall be presented to the House not later than three clear days after the same shall have been indorsed by the examiner, or if, when the same is indorsed, the House shall not be sitting, then not later than three clear days after the first sitting thereof subsequent to such indorsement; and if the House shall not be sitting on the latest day on which any petition ought to be presented, then the same shall be presented on the first day on which the House shall again sit.

Petitions, when to be presented.

196. All private bills which have been ordered to be brought in shall be presented to the House by depositing the same in the Private Bill Office, and shall be laid, by one of the clerks of that office, on the table of the House for first reading, together with a list of such bills.

How private bills to be presented.

197. No private bill shall be read a first time unless it be presented not later than one clear day after the presentation of the petition for leave to bring in the same; or where the petition has been referred to the Select Committee on Standing Orders, then not later than one clear day after the House shall have given leave to the parties to proceed with the bill.

Bill, when to be presented.

198. No petition for additional provision in any private bill will be received by this House, unless a printed copy of the proposed clauses be annexed thereto.

Petition for additional provision.

199. All reports of the examiner of petitions for private bills, in which he shall report that the Standing Orders have not been complied with, and all special reports of the said examiner, shall be referred to the Select Committee on Standing Orders.

Reports of examiner to be referred to Committee on Standing Orders.

200. All petitions praying that any of the sessional or standing orders of the House relating to private bills may be dispensed with, and all petitions for the re-insertion of petitions for private bills in the general list of petitions, and all petitions opposing the same, shall be presented to this House by depositing the same in the Private Bill Office; and every such petition, so deposited, shall stand referred to the Select Committee on Standing Orders.

Petitions for dispensation, &c. to be referred to Committee on Standing Orders.

200a. When a bill having been brought in on motion (not being a bill to confirm a provisional order or certificate) is read the first time, and ordered to be read a second time, on a day appointed, and it appears that the Standing Orders relative to private bills may be applicable to the bill, the examiners of petitions for private bills shall, on an order of the House, examine the bill with respect to compliance with the Standing Orders, and shall proceed and report forthwith, and the order for the second reading of the bill shall not be affected thereby, but if the examiners report that any Standing Order applicable to the bill has not been complied with, and the Select Committee on Standing Orders report that such Standing Order ought not to be dispensed with, the order for the second reading of the bill, or the order for the commitment thereof, as the case may be, shall be discharged.

Standing Orders applicable to bills brought in on motion.

Printed bill to be presented. 201. Every private bill, printed on paper of a size to be determined upon by Mr. Speaker, shall be presented to the House, with a cover of parchment attached to it, upon which the title of the bill is to be written ; and the short title of the bill, as first entered on the votes, shall correspond with that at the head of the advertisement.

Rates, tolls and other matters to be inserted in italics. 202. All rates, tolls, charges, duties, or penalties of every description, the amount of capital to be raised, and of borrowing powers, the names of directors, the period for completion of works or for purchase of lands, the quantity of land to be taken for extraordinary purposes, the amount of personal luggage to be carried free of charge, and all charges in any way affecting the public revenue, which occur in the clauses of any private bill, shall be printed in italics in such bill when presented to the House.

What bills to be printed, and when. 203. Every private bill (except name bills) shall be printed ; and printed copies thereof delivered to the doorkeepers for the use of the members before the first reading.

Time between first and second reading. 204. There shall not be less than three clear days, nor more than seven, between the first and second reading of any private bill, or any bill to confirm any provisional order or provisional certificate, unless any such private bill have been referred to the examiners of petitions for private bills, in which case such bill shall not be read a second time later than seven clear days after the report of the examiner, or of the Select Committee on Standing Orders, as the case may be.

Petition relating to bills to be presented to House by being deposited in the Private Bill Office, and name of bill to be indorsed on every petition. 205. Every petition in favour of or against any private bill, or any bill to confirm any provisional order or provisional certificate before the House, or otherwise relating thereto (not being a petition for additional provision), shall be presented to this House by depositing the same in the Private Bill Office, and there shall be indorsed thereon the name or short title by which such bill is entered in the votes, and a statement that such petition is in favour of or against the bill, or otherwise, as the case may be, together with the name of the member, party, or agent depositing the same.

Petitioner or memorialist may withdraw petition or memorial. 206. Any petitioner or memorialist may withdraw his petition or memorial, on a requisition to that effect being deposited in the Private Bill Office, signed by him or by the agent who deposited such petition or memorial ; and where any such petition or memorial is signed by more than one person, any person signing such petition or memorial may withdraw his opposition by a similar requisition, signed and deposited as aforesaid.

When second or third reading opposed, to be postponed. 207. In cases where the second or third reading of a private bill, or the consideration of a bill as amended by the committee or any proposed clause or amendment, is opposed, the same shall be postponed until the day on which the House shall next sit.

208. Every private bill, not being a railway, canal, or divorce bill, after having been read a second time and committed, shall stand referred to the committee of selection; and if a railway or canal bill, to the general committee on railway and canal bills; and if a divorce bill, to the select committee on divorce bills.

Bills to stand referred to Committees of Selection, General Committee, and Divorce.

208a. Every bill for confirming provisional orders or provisional certificates, shall after the second reading stand referred to the committee of selection or to the general committee on railway and canal bills as the case may require, and be subject to the standing orders regulating the proceedings upon private bills so far as they are applicable; provided that when any order or certificate contained in any such bill is opposed, the committee to whom such opposed order or certificate is referred shall consider all the orders or certificates comprised in such bill.

Provisional order bills to stand referred to Committee of Selection, or General Committee on railway and canal bills, &c.

209. When the House shall have been informed by the chairman of Ways and Means that in his opinion any unopposed private bill should be treated as an opposed bill, such bill shall be again referred to the committee of selection; or in the case of a railway or canal bill, to the general committee on railway and canal bills.

When unopposed bill is to be treated as opposed, to be again referred to Committee of Selection or General Committee.

210. Every petition against a private bill which shall have been deposited in the Private Bill Office not later than ten clear days after the first reading of such bill, and every petition against any bill to confirm any provisional order or provisional certificate, which shall have been deposited in the Private Bill Office not later than seven clear days after the report of the examiner on such bill, or which shall have been otherwise deposited in accordance with the standing orders of the House, and in which the petitioners shall have prayed to be heard, by themselves, their counsel or agents, shall stand referred to the committee on such bill, and such petitioners, subject to the rules and orders of the House, shall be heard upon their petition accordingly, if they think fit, and counsel heard, in favour of the bill, against such petition.

Petition against bill, if duly deposited in Private Bill Office, to stand referred to committee on bill, &c.

211. There shall be six clear days between the second reading of every private bill, and of every bill to confirm any provisional order or provisional certificate, and the sitting of the committee thereupon, except in the case of name bills, naturalization bills, and estate bills (not being bills relating to crown, church, or corporation property, or property held in trust for public or charitable purposes), in respect of which there shall be three clear days between the second reading and the committee.

Time between second reading and committee.

212. All reports made under the authority of any public department upon a private bill, or the objects thereof, laid before the House, shall stand referred to the committee on the bill.

Reports of departments to stand referred to committee on bill.

213. The report upon every private bill shall lie upon the table: and every such bill, if amended in committee, or a railway or a tramway bill, shall be ordered to lie upon the table; but if not

Report of bills.

amended in committee, and not a railway or a tramway bill, it shall be ordered to be read a third time.

Bill to be printed after report.

214. Every private bill, as amended in committee, shall be printed at the expense of the parties applying for the same, and delivered to the door-keepers for the use of the members, three clear days at least before the consideration of such bill.

Time between report and consideration of bill, &c.

215. In the case of private bills ordered to lie upon the table, three clear days shall intervene between the report and the consideration of the bill, and no consideration of any such bill shall take place, unless the chairman of the Committee of Ways and Means shall have informed the House, or signified in writing to Mr. Speaker, whether the bill contain the several provisions required by the standing orders.

No clause or amendment on consideration of bill, or on third reading, to be offered, unless Chairman of Ways and Means shall have informed the House, &c.

216. No clause or amendment shall be offered in the House on the consideration of any private bill ordered to lie upon the table, nor any verbal amendment on the third reading of any private bill, unless the chairman of the Committee of Ways and Means shall have informed the House, or signified in writing to Mr. Speaker, whether, in his opinion, such clause or amendment be such as ought or ought not to be entertained by the House without referring the same to the Select Committee on Standing Orders.

Clauses and amendments offered on consideration of bill, or verbal amendments on third reading, to be printed.

217. When any clause or amendment is offered on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, such clause or amendment shall be printed: And when any clause is proposed to be amended, it shall be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets and underlined. The expense of printing such clauses or amendments, when offered by a party promoting or opposing a bill, shall be paid by such party.

When referred, no further proceeding to be had until report of Select Committee on Standing Orders.

218. When any clause or amendment on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, shall have been referred to the Select Committee on Standing Orders, no further proceeding shall be had until the report of the said select committee shall have been brought up.

No amendments, except verbal, on third reading.

219. No amendments, not being merely verbal, shall be made to any private bill on the third reading.

Lords' amendments to be printed and circulated with the votes prior to consideration, &c.

220. All amendments made by the House of Lords to any private bill shall be printed at the expense of the parties, and circulated with the votes, prior to such amendments being taken into consideration; and where any clause has been amended, it shall be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets and underlined; and when any amendments are intended to be proposed to the Lords' amendments, such proposed amendments shall also be printed in like manner.

221. Every private bill, after it has been read a third time, shall be printed fair, at the expense of the parties applying for the same.

Bill to be printed fair after third reading.

222. In all cases where it is intended to appoint a committee to inspect the journals of the House of Lords with relation to any proceedings upon any private bill, previous notice thereof in writing shall be given by the agent to the clerks in the committee office.

Notice of committee to inspect Lords' journals to be given to committee clerks.

223. No private bill shall pass through two stages on one and the same day without the special leave of the House.

Bill not to proceed two stages on same day.

224. Except in cases of urgent and pressing necessity, no motion shall be made to dispense with any sessional or standing order of the House without due notice thereof.

Notice to be given of motion for dispensation.

225. Each day, so soon as the House shall be ready to proceed to private business, the clerk at the table shall read from the private business list, and from the list of bills presented for first reading (see Order 196), the titles of the several bills set down therein, according to their precedence, as arranged under the following heads:—

Order of proceedings in House on private business.

1. Consideration of Lords' Amendments;
2. Third Reading;
3. Consideration of bills ordered to lie upon the table;
4. Second reading;
5. First reading;

and if upon the reading of each such title as aforesaid, no motion shall be made with respect to such private bill, the further proceedings thereon shall be adjourned until the next sitting of the House.

226. This House will not insist on its privileges with regard to any clauses in private bills, or in bills to confirm any provisional orders or provisional certificates sent down from the House of Lords which refer to tolls and charges for services performed, and are not in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes.

Tolls and charges not in the nature of a tax.

PART V.

THE ORDERS REGULATING THE PRACTICE IN THE PRIVATE BILL OFFICE.

227. Registers shall be kept in "The Private Bill Office," in which shall be entered by the clerks appointed for the business of that office, the name and place of residence of the parliamentary agent in town, and of the agent in the country (if any) soliciting the bill; and all the proceedings, from the petition to the passing of the bill:—Such entries to specify, briefly, each day's proceeding before the examiners of petitions respectively, or in the House, or

Private Bill Office and registers.

in any committee to which the bill may be referred ; the day and hour on which the examiner or the committee is appointed to sit ; the day and hour to which the proceedings before such examiners or committee may be adjourned, and the name of the clerk attending the same. Such registers to be open to public inspection daily in the said office.

Receipt of documents to be acknowledged.

228. The receipt of all documents required by the standing orders of the House to be deposited in the Private Bill Office, shall be acknowledged by one of the clerks of the said office, upon the said documents, when deposited.

List of petitions to be kept.

229. A list of all petitions for private bills shall be kept in the Private Bill Office in the order of their deposit, according to such regulations as shall have been made by Mr. Speaker, which shall be called the "General List of Petitions," and each petition therein shall be numbered.

Memorials, when to be deposited.

230. All memorials complaining of non-compliance with the standing orders, in reference to petitions for bills deposited in the Private Bill Office on or before the 21st December, shall be deposited as follows :—

If the same relate to petitions for bills numbered in the General List of Petitions ;

From

1 to 100	} They shall be deposited {	January 9th.
101 to 200		" 16th.
201 and upwards		" 23rd.

And in the case of any petitions for bills which may be deposited by leave of the House after the 21st December, such memorials shall be deposited three clear days before the day first appointed for the examination of the petition.

Deposit of memorials and copies thereof in Private Bill Office.

231. All memorials shall be deposited in the Private Bill Office before six of the clock in the evening of any day on which the House shall, and before two of the clock on any day on which the House shall not sit ; and two copies of every such memorial shall be deposited for the use of the examiners before twelve of the clock on the following day.

Time for depositing memorials in certain cases, &c.

232. Every memorial complaining of non-compliance with the standing orders of the House in reference to petitions for additional provision in private bills, to bills brought from the House of Lords, and to bills introduced by leave of this House in lieu of other bills which shall have been withdrawn, and to bills for confirming any provisional order or provisional certificate, shall be deposited in the Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of any such petition or bill by the examiner ; and the examiner shall be at liberty to entertain such memorial, although the party (if any) who may be specially affected by the non-compliance with the standing orders shall not have signed the same.

233. Every private bill, after it has been read the first time, shall be in the custody of the clerks of the Private Bill Office, until laid upon the table for the second reading; and when committed, shall be taken by the proper committee clerk into his charge, till reported.

Custody of bills.

234. Between the first and second reading of every private bill, the bill shall be examined, with all practicable despatch, by the clerks of the Private Bill Office, as to its conformity with the rules and standing orders of the House.

Examination of bills.

235. Three clear days' notice in writing shall be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the second reading of every private bill; and no such notice shall be given until the day after that on which the bill has been ordered to be read a second time.

Notice of second reading.

236. Four clear days' notice in the case of opposed bills, and one clear day's notice in the case of unopposed and re-committed bills, shall be given to the clerks in the Private Bill Office by the clerk to the Committee of Selection, or by the clerk to the General Committee on Railway and Canal Bills, with regard to all bills referred to either of the said committees, and, with regard to bills not referred to either of the said committees, by the clerk to the committee to which any such bill is either referred or re-committed, of the day and hour appointed for the first meeting of the committee on every private bill, and notice shall be given in like manner of the postponement of the first meeting of the committee on every private bill on the day on which such postponement is made.

Notice of committee.

237. A filled-up bill, signed by the agent for the bill, as proposed to be submitted to the committee on the bill, and in the case of a re-committed bill, a filled-up bill as proposed to be submitted to the committee on re-committal, shall be deposited in the Private Bill Office two clear days before the meeting of the committee on every private bill; and a copy of the proposed amendments shall be furnished by the promoters to such parties petitioning against the bill as shall apply for it, one clear day before the meeting of the committee.

Filled-up bill to be deposited in Private Bill Office.

238. Notice, in writing, shall be given by the committee clerk to the clerks in the Private Bill Office, of the day and hour to which each committee is adjourned.

Notice of adjournment.

239. One clear day's notice, in writing, shall be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the consideration of every private bill ordered to lie upon the table.

Notice of consideration of bill.

240. The committee clerk, after the report is made out, shall deliver in to the Private Bill Office, a printed copy of the bill, with the written amendments made in the committee; in which bill

Bill as amended in committee to be delivered in.

all the clauses added by the committee shall be regularly marked in those parts of the bill wherein they are to be inserted.

Bill printed
as amended
to be
examined.

241. Every private bill printed as amended in committee, shall be examined by the clerks in the Private Bill Office, with the bill delivered in by the committee clerk, and the examining clerks shall indorse thereon a certificate of such examination.

Notice to be
given of
clauses, &c.
on considera-
tion of bill, or
verbal
amendments
on third
reading.

242. When it is intended to bring up any clause or to propose any amendment on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, notice shall be given thereof, in the Private Bill Office, one clear day previous to such consideration or third reading.

Notice of
third reading.

243. One clear day's notice, in writing, shall be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the third reading of every private bill; and no such notice shall be given until the day after that on which the bill shall have been ordered to be read a third time.

Amendments
on considera-
tion of bill
and third
reading.

244. The amendments (if any) which are made on the consideration of any private bill ordered to lie upon the table, and on the third reading of any private bill, and also such amendments made by the House of Lords as shall have been agreed to by this House, shall be entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill as amended in committee; which clerk shall sign the said copy so amended, in order to its being deposited and preserved in the said office.

Private bills
sent to the
Lords to be
indorsed with
certificate of
examination.

245. Every private bill, after it has been printed fair, shall, before the same is sent to the Lords, be examined by the clerks in the Private Bill Office with the bill as read a third time: and the examining clerks shall indorse thereon a certificate of such examination.

Notice of
consideration
of Lords'
amendments.

246. When amendments made by the House of Lords to any private bill are to be taken into consideration, one clear day's notice shall be given thereof in the Private Bill Office, and if any amendments be intended to be proposed thereto, a copy of such amendments shall also be deposited, and notice given thereof, one clear day previous to the same being proposed to be taken into consideration: and no such notice shall be given until the day after that on which such bill shall have been returned from the House of Lords.

Time for
delivering
notices.

247. All notices required to be given or deposits to be made in the Private Bill Office shall be delivered in the said office before six of the clock in the evening of any day on which the House shall sit, and before two of the clock on any day on which the House shall not sit; and after any day on which the House shall have

adjourned beyond the following day, no notice shall be given for the first day on which it shall again sit.

248. The clerks in the Private Bill Office shall prepare, daily, lists of all private bills, and petitions for private bills, upon which any committee or examiner is appointed to sit; specifying the hour of meeting, and the room where the committee or examiner shall sit; and the same shall be hung up in the lobby of the House.

Daily lists of committees sitting.

249. Every plan, and book of reference thereto, which shall be certified by the Speaker of the House of Commons, in pursuance of any Act of Parliament, shall previously be ascertained and verified, in such manner as shall be deemed most advisable by the Speaker, to be exactly conformable in all respects to the plan and book of reference which shall have been signed by the chairman of the committee upon the bill.

Plans to be verified as Mr. Speaker shall direct.

APPENDIX (A.)

[FORM REFERRED TO IN ORDER 11.]

No. .

SIR,

We beg to inform you that application is intended to be made to Parliament in the ensuing session for "An Act" [*here insert the title of the Act*], and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of yards on either side of the said line which will be applied for in the said Act.

We also beg to inform you that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the [*several clerks of the peace, or principal sheriff clerks, as the case may be*] of the counties of [*specify the counties in which the property is situate*], on or before the 30th of November, and that copies of so much of the said plan and section as relates to the [*parish or extra-parochial place, as the case may be*], in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the [*clerk of the said parish, clerk of the parish of adjoining to such extra-parochial place, session clerk, town clerk of the royal burgh, or the clerk of the union in which such parish is included, as the case may be*], on or before the 30th day of November, on which plans your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are

Appendix.

neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality in the Form left herewith, and returning the same to us with your signature on or before the day of next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, Sir,
Your most obedient servants,

To .

NOTE.—If the application be forwarded by post, the words "*Parliamentary Notice*" are to be printed or written on the cover.

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE, DESCRIBING THE PROPERTY THEREIN ALLUDED TO.

—	Parish, Township, Townland, or Extra- parochial Place.	Number on Plans.	Descrip- tion.	Owner.	Lessee.	Occupier.
Property on the line of the pro- posed work, or within the limits of the deviation in- tended to be applied for.						

**A TABLE OF THE FEES TO BE CHARGED AT THE
HOUSE OF COMMONS.**

Fees to be Paid by the Promoters of a Private Bill.

On the deposit of the petition, bill, plan, or any other document in the Private Bill Office	£	s.	d.
For every day on which the Examiners shall inquire into the compliance with the standing orders	5	0	0

For Proceedings in the House.

On the presentation of the petition for the bill	5	0	0
On the first reading of the bill	15	0	0
On the second reading of the bill	15	0	0
On the report from the committee on the bill	15	0	0
On the third reading of the bill	15	0	0

Bills from the Lords, commonly called estate bills, divorce bills, naturalization bills and name bills, to be charged only one-half of the preceding fees.

The preceding fees on the petition, first, second, and third readings, and report, to be increased according to the money to be raised or expended under the authority of any bill for the execution of a work, in conformity with the following scale:—

If the sum be 100,000*l.* and under 500,000*l.*, twice the amount of such fees.

If the sum be 500,000*l.* and under 1,000,000*l.*, three times the amount of such fees.

If the sum be 1,000,000*l.* and above, four times the amount of such fees.

For Proceedings before any Committee or the Referees.

For every day on which the committee or the referees shall sit,—	£	s.	d.
If the promoters of the bill appear by counsel	10	0	0
If they appear without counsel	5	0	0

Fees to be Paid by the Opponents of a Private Bill.

On the deposit of every memorial complaining that the standing orders have not been complied with	1	0	0
On the presentation or deposit of every petition against a private bill ..	2	0	0

For Proceedings before the Examiners, or before any Committee, or the Referees.

For every day on which the examiners shall inquire into any memorial complaining of a non-compliance with the standing orders	3	0	0
For every day on which the petitioners appear before any committee or the referees	2	0	0

GENERAL FEES.

On every motion, order, or proceeding in the House upon a private bill, petition, or matter not otherwise charged	£	s.	d.
For copies of all papers and documents, at the rate of 72 words in every folio,—	1	0	0
If five folios or under	0	2	6
If above five folios, per folio	0	0	6
For the copy of a plan made by the parties	1	0	0
For the inspection of a plan, or of any document	0	6	0
For every plan or document certified by the Speaker pursuant to any Act of Parliament	10	0	0
For every day on which any parties shall be heard by counsel at the Bar, from each side	10	0	0
For every day on which a committee of the whole House shall sit on a private bill or matter	6	0	0
For serving any summons or order on a private bill or matter	1	0	0

Appendix.

	£	s.	d.
For every order for the commitment or discharge of any person	1	0	0
For taking any person into custody for a breach of privilege or contempt	5	0	0
For taking any person into custody for any other cause	2	0	0
For every day on which any person shall be in custody	1	0	0
For riding charges, per mile	0	0	6

Fees to be Paid on the Taxation of Costs on Private Bills.

For every application or reference to "the Taxing Officer of the House of Commons," for the taxation of a bill of costs	1	0	0
For every 100 <i>l.</i> of any bill which shall be allowed by the taxing officer	1	0	0
On the deposit of every memorial complaining of a report of the taxing officer	1	0	0
For every certificate which shall be signed by the Speaker	1	0	0
For copies of any documents in the office of the taxing officer, per folio of 72 words	0	1	0

That the same fees be paid in case the Speaker shall refer to the taxing officer any bill of costs, under the authority of an Act of the sixth year of his late Majesty King George the Fourth, "To establish a Taxation of Costs on Private Bills in the House of Commons."

That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition, or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill within the meaning of the Table of Fees.

Fees to be taken by the Shorthand Writer.

	£	s.	d.
For every day he shall attend	2	2	0
For the transcript of his notes, per folio of 72 words	0	0	9

The preceding fees shall be charged, paid and received at such times, in such manner, and under such regulations, as the Speaker shall from time to time direct.

H. BRAND, *Speaker.*

Mercurii, 27 die Julii, 1864.

Ordered, That the said Table of Fees be a standing order of this House.

T. ESKINE MAY,

Clerk of the House of Commons.

BYELAWS AND REGULATIONS.

Made by the Railway Company with the approval of the Board of Trade, for regulating the Travelling upon and using of all Railways belonging to, or leased to, the said Company, and with respect to which that Company have power to make Byelaws.

Obtaining
ticket and
delivering up
the same.

1. No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued. Every passenger shall show and deliver up his ticket (whether a contract or a season ticket or otherwise) to any duly authorised servant of the company whenever required to do

so for any purpose. Any passenger travelling without a ticket, or failing or refusing to show or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of his journey.

2. Any passenger using or attempting to use a ticket on any day for which such ticket is not available, or using a ticket which has been already used on a previous journey, is hereby subjected to a penalty not exceeding forty shillings. Using ticket for any other day.

3. Any passenger using or attempting to use a ticket for any other station than that for which it is available will be required to pay the difference between the sum actually paid and the fare between the stations from and to which the passenger has travelled, or, at the option of the company, the fare from the station to which he was booked to the end of his journey. Using ticket for any other station.

4. Any passenger wilfully altering or defacing his ticket, so as to render the date, number, or any material portion thereof illegible, is hereby subjected to a penalty not exceeding forty shillings. Defacing tickets.

5. A return ticket is granted solely for the purpose of enabling the person for whom the same is issued to travel therewith to and from the stations marked thereon, and is not transferable. Any person who sells, or attempts to sell, or parts or attempts to part with the possession of the return half of any return ticket in order to enable any other person to travel therewith, is hereby subjected to a penalty not exceeding forty shillings, and any person purchasing such half of a return ticket, or travelling or attempting to travel therewith, shall be liable to pay the fare which he would have been liable to pay for the single journey, and shall in addition thereto, be subjected to a penalty not exceeding forty shillings. Sale and purchase of return tickets.

6. At the intermediate stations the fares will only be accepted and the tickets issued, conditionally; that is to say, in case there shall be room in the train for which the tickets are issued. In case there shall not be room for all the passengers to whom tickets have been issued, those to whom tickets have been issued for the longest distance shall (if reasonably practicable) have the preference, and those to whom tickets have been issued for the same distance shall (if reasonably practicable) have priority according to the order in which tickets have been issued, as denoted by the consecutive numbers stamped upon them. The company will not, however, hold itself responsible for such order of preference or priority being adhered to, but the fare or difference of fare, if the passenger travel by an ordinary train in a class of carriage inferior to that for which he has a ticket, shall be immediately returned, on application, to any passenger for whom there is not room as aforesaid, if the application be made before the departure of the train. Tickets issued when there is room.

7. Every person smoking in any shed or covered platform of a station, or in any building of the company, or in any carriage or compartment of a carriage not specially provided for that purpose, is hereby subjected to a penalty not exceeding forty shillings. Smoking.

The company's officers and servants are required to take the necessary steps to enforce obedience to this byelaw; and any person offending against it is liable, in addition to incurring the penalty above mentioned, to be summarily removed, at the first opportunity, from the carriage, or from the company's premises.

Using ticket for superior class.

8. Any person travelling without the special permission of some duly authorised servant of the company in a carriage or by a train of a superior class to that for which his ticket was issued, is hereby subjected to a penalty not exceeding forty shillings; and shall, in addition, be liable to pay the fare, according to the class of carriage in which he is travelling, from the station whence the train originally started, unless he shows that he had no intent to defraud.

Being intoxicated or using obscene or abusive language, &c.

9. Any person found in a carriage, or elsewhere upon the company's premises, in a state of intoxication, or using obscene or abusive language, or writing obscene or offensive words on any part of the company's stations or carriages, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers, is hereby subjected to a penalty not exceeding forty shillings, and shall immediately, or, if a passenger, at the first opportunity, be removed from the company's premises.

Persons playing the three card trick are liable to be convicted under the Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38, s. 3) (*Langrish v. Archer*, 10 Q. B. D. 44).

Damaging property.

10. Any person who wilfully cuts or tears any lining or window strap, or curtain, removes or defaces any number plate, or breaks or scratches any window of a carriage used on the railway, or who otherwise, except by unavoidable accident, damages, defaces, or injures any such carriage, or any station, or other property of the company, is hereby subjected to a penalty not exceeding five pounds, in addition to the amount of any damage for which he may be liable.

Travelling on roof, steps, &c.

11. No passenger shall be permitted to travel on the roof, steps, or footboard of any carriage, or on the engine, or in the guard's van, or any portion of any carriage not intended for the conveyance of passengers; and any passenger persisting in doing so, after being warned to desist by the guard in charge of the train, or any duly authorised servant of the company, is hereby subjected to a penalty not exceeding forty shillings, and shall be liable to be summarily removed from the company's premises.

Entering or leaving carriage when in motion.

12. Any passenger entering or leaving, or attempting to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform, or other place appointed by the company for passengers to enter or leave the carriages, is hereby subjected to a penalty not exceeding forty shillings.

Entering full carriage.

13. Any passenger persisting in entering a carriage or compartment of a carriage containing the full number of persons which it is constructed to convey, when any such person objects to his so

entering the carriage or compartment, is hereby subjected to a penalty not exceeding forty shillings.

14. Dogs and other animals will not be suffered to accompany passengers in the carriages, but will be conveyed separately and charged for, and any person taking a dog or other animal with him into any passenger carriage used on the railway is hereby subjected to a penalty not exceeding forty shillings.

Conveyance
of dogs in
carriages.

15. Loaded fire-arms are on no account to be taken into or placed upon any carriage, waggon, truck, or other vehicle forming or intended to form a train or any portion of a train on the railway, or to be brought to the station, or on to the premises of the company, and every person so offending is hereby subjected to a penalty not exceeding five pounds.

Taking
loaded fire-
arms.

16. The company may refuse to carry any person who has any infectious disorder. If any person who has any such disorder is found upon the premises of the company, or travels or attempts to travel on the railway of the company, without the special permission of the company, he shall be liable to a penalty not exceeding forty shillings, in addition to the forfeiture of any fare which he may have paid, and may be removed at the first opportunity from the company's premises. Any person who has charge of any person suffering from an infectious disorder while upon the premises of the company, or travelling or attempting to travel on the railway, or who aids or assists any person suffering from such disorder, in being upon the premises of the company, or travelling or attempting to travel on the railway, shall be liable to a penalty not exceeding forty shillings, unless the person suffering from such disorder be travelling with the special permission of the company.

Travelling
with infec-
tious disorder.

17. Every driver or conductor of an omnibus, cab, carriage, or other vehicle shall, while in or upon any station yard or other premises of the company, obey the reasonable directions of the company's officers and servants duly authorised in that behalf; and every person offending against this regulation is hereby subjected to a penalty not exceeding forty shillings.

Omnibuses,
&c. drivers
obeying
servants of
company.

Given under the common seal of the Railway Company,
the day of , 18 .



Secretary of the Company.

The Board of Trade hereby signify their allowance and approval of the above byelaws and regulations.

Signed by order of the Board of Trade
the day of 18 .

Assistant-Secretary to the Board of Trade.

NOTICES.

Penalty for Fraud.

1. Under the 103rd and 104th sections of the Railways Clauses Consolidation Act, 1845, it is provided that if any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings; and if any person commit any such offence, all officers and servants and other persons on behalf of the company may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

Obstructing Officers of the Company.

2. Under the 109th section of "The Railways Clauses Consolidation Act, 1845," it is provided that if the infraction or non-observance of the company's byelaws or regulations be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such byelaw; and under the 16th section of the Act 3 & 4 Vict. c. 97, it is provided that if any person shall wilfully obstruct or impede any officer or agent of the company in the execution of his duty upon the railway, or upon or in any of the stations or other works or premises connected therewith, every such person so offending, and all others aiding or assisting therein, may be seized and detained until he can conveniently be taken before a justice, and shall in the discretion of such justice forfeit any sum not exceeding five pounds, and in default of payment thereof be imprisoned for any term not exceeding two calendar months.

Injuring Notice Boards, &c.

3. Under the 144th section of "The Railways Clauses Consolidation Act, 1845," it is provided that if any person pull down or injure any board put up or affixed for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Sending Dangerous Goods.

4. Under the 105th section of "The Railways Clauses Consolidation Act, 1845," it is provided that no person shall be entitled to carry, or to require the company to carry, upon the railway any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature, and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left at the time of so sending, he shall forfeit to the company twenty pounds for every such offence, and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Using Communication between Passengers and Servants of the Company.

5. Under the 22nd section of "The Regulation of Railways Act, 1868," it is provided that any passenger who makes use of the means of communication between the passengers and the servants of the company in charge of a train without reasonable and sufficient cause, shall be liable for each offence to a penalty not exceeding five pounds.

Trespassing on Railway.

6. Under the 23rd section of "The Regulation of Railways Act, 1868," as amended by section 14 of "The Regulation of Railways Act, 1871," it is provided that if any person shall be or pass upon the railway, except for the purpose of crossing the same at any authorised crossing, after having once received warning by the company which works such railway, or by any of their agents or servants, not to go or pass thereon, every person so offending shall forfeit and pay any sum not exceeding forty shillings for every such offence.

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